SUPREME COURT OF THE UNITED STATES.

No. 250. 27.

THE CITY OF CARONDELET, PLAINTIFF IN ERROR,

vs.

THE CITY OF SAINT LOUIS, DEFENDANT IN ERROR.

ERROR TO SUPREME COURT OF MISSOURI, HELD AT SAINT LOUIS.

G. S. GIDEON, Printer, 511 Ninth street, Washington.

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Petition.

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that on the sixteenth day of February, in the year of our Lord one thousand eight hundred and fifty-five, there was filed in the office of the clerk of the St. Louis land court a petition; which petition is in the words and figures following, to wit:

In the St. Louis Land Court of March Term, 1855.

THE CITY OF CARONDELET, Plaintiff,
vs.
THE CITY OF ST. LOUIS, Defendant.

Plaintiff, a body politic and corporate in the State of Missouri, states that the town of Carondelet, now a city in the county of St. Louis, in said State, was, prior to the 20th day of December, 1803, and for more than thirty years before then, a Spanish town or village, and for several years before and after the year 1803, the inhabitants of said town or village used and possessed, according to Spanish law and usage in Spanish provinces, a certain tract of land in said county, adjoining the said town or village on the north, as commons belonging to said town, now city, of Carondelet:

That some time between the years 1796 and 1800, the northern line of said Carondelet common was marked and surveyed by Don Antonio Soulard, the Spanish surveyor for the province of Upper Louisiana, pursuant to an order made by the lieutenant governor of said province, and published at the church door of St. Louis, the adjoining town on the north, which line was run by the said Spanish surveyor, in the presence of certain inhabitants of each of said towns, and commenced on the bluff bank of the river Mississippi, at the Sugar Loaf, a mound so called, about four miles south of St. Louis and two miles north of Carondelet, and running thence westwardly, for direction, to the northeast corner of the common fields of Carondelet; and monuments were established upon said line at the east and west ends, and the line was marked by cutt'n; the trees thereon, and piling the brush as a temporary fence along the line; and the said town and inhabitants of Carondelet possessed, as their common, on the north of the town of Carondelet, the land bounded by the said line so run on the north, the Mississippi river on the east, the town or village of Carondelet on the south, and the common fields of Carondelet on the west; and continued to possess and use the same as commons of said town of

Carondelet, from 1796 until the 20th day of December, 1803, and for several years thereafter, and continued to claim, and did claim, the said land, as commons belonging to said town, on the 13th day of June, 1812.

And plaintiff avers that the said tract of land, so used as said common, was confirmed to the inhabitants of said town or village of Carondelet by the act of Congress passed and approved on the 13th day of June, 1812, absolutely, without any condition whatever, under and by virtue of the first section of said act of Congress, and that thereby the said inhabitants of said town or village of Carondelet became the absolute owners of the whole of said tract of land in fee simple; and the said inhabitants of said town, in Spanish times, prior to the 20th day of December, 1803, consisted of about forty families, and at the time of the passage of said act of 1812 there were about the same number of families, a large majority of whom were primitive settlers, or descendants of the primitive settlers upon the lands at Carondelet in Spanish times.

And plaintiff avers that it has succeeded to all the rights and title of the said inhabitants of Carondelet in and to said tract of land claimed and confirmed as commons, and that the said city of St. Louis, in fraud of the rights of the said inhabitants of Carondelet, then a town, did, some time in the year 1831, procure a survey of the commons of St. Louis to be made by the surveyor general of Missouri and Illinois, pretending to act under authority of the Government of the United States, so as to run the south line of such survey nearly one mile south of the said Sugar Loaf mound, from the river Mississippi to the Carondelet common fields, which line forms the south boundary of blocks ninety-two, ninety-three and ninety-four on a certain map of survey lately made for said city of St. Louis by C. E. Salomon, in May, 1854, which said survey of 1831, made as aforesaid, instead of being made as described, ought to have been made by running the south line so as to have followed the line of the Spanish survey made by Don Antonio Soulard, as aforesaid, in accordance with the line of division established between the commons of St. Louis and Carondelet in Spanish times, and the respective possessions of said parties inhabitants of the said towns respectively under and after the said establishment of said division line, up to and after the cession of the territory of Upper Louisiana by Spain to France and by France to the United States.

And plaintiff avers that said United States survey of 1831 for St. Louis was made without any warrant or authority of law, and in violation and in fraud of the just rights of the said inhabitants of Carondelet, as aforesaid, and so far as the said survey covers the ground embraced as aforesaid within the commons of Carondelet the same is null and void, and creates no right or interest there-

under in the city of St. Louis; and plaintiff insists that it be so held by the court upon principles of justice and equity.

And plaintiff further states that the said city of Carondelet was, on the first day of January, 1855, lawfully entitled to the possession of, and claims title in fee simple to, the north half of block ninety-three, the east half of block eighty-nine, the southwest quarter of block eighty-eight, the southwest quarter of block eighty-three, and lots one and two in subdivision one, and lots from one to twenty-four in subdivision two, of lot four, as marked on said map of Salomon; the whole of said land and lots being within the commons of Carondelet in said county, as confirmed by the said Congress of the 13th day of June, 1812; and the plaintiff being so entitled to the possession thereof, the defendant afterwards, to wit, on the second day of January, 1855, entered into such premises and unlawfully withholds from the plaintiff the possession thereof; and the said city of St. Louis claims to hold under said pretended and illegal survey of 1831, for color of title, and to throw a cloud upon the title of the plaintiff under said confirmation of 1812.

And the plaintiff asks judgment that the said survey of 1831, so far as it covers the commons of Carondelet, be set aside and held for naught, and that the plaintiff be put into the possession of said premises sued for, and that plaintiff recover as damages for rents and profits the sum of four thousand dollars and costs.

B. A. & D. W. HILL,
Atty's for Pl'ff.

COUNTY OF ST. LOUIS, *ss.*

Anthony H. Menkins, agent for plaintiffs, being duly sworn, says that he believes the foregoing petition and the matters therein as stated are true.

A. H. MENKENS.

Sworn to before me this 16th day of February, A. D. 1855.
C. A. MANTZ, *Clerk.*
By J. B. WALSH, *Deputy.*

Summons.

Upon the filing of the above petition the clerk then issued to the sheriff of St. Louis county a summons; which summons is in the words and figures following, to wit:

COUNTY OF ST. LOUIS, *ss.*

The State of Missouri to the Sheriff of St. Louis county, greeting:

We command you to summon the city of St. Louis to appear before the judge of our St. Louis land court, on first day of the next term thereof, to be held in the city of St. Louis, within and for the county of St. Louis, on the first Monday of March next, then and there to answer the complaint of the city of Carondelet, as

set forth in the annexed petition; and have you then and there this writ.

Witness Charles A. Mantz, clerk of our said court, with the seal thereof hereto affixed, at office in the city of St. [SEAL.] Louis, this seventeenth day of February, in the year of our Lord eighteen hundred and fifty-five.

CHARLES A. MANTZ, *Clerk.*

Sheriff's Return.

Upon which summons the sheriff made his return in words and figures as follows, to wit:

Executed this writ in the county of St. Louis on the 17th day of February, 1855, by delivering a copy of the same and petition, as furnished by the clerk, to John How, mayor of the city of St. Louis.

TURNER MADDOX, *Sheriff.*
By J. S. WILKINS, *Dep'ty.*

Answer filed.

And afterwards, to wit, on the 17th day of May, A. D. 1855, there was filed an answer in this cause; which answer is in the words and figures following, to wit:

Answer.

THE CITY OF CARONDELET, Plaintiff,
vs.
THE CITY OF ST. LOUIS, Defendant.

The defendant comes and says that the said plaintiff is not legally entitled to the possession of the premises described in the petition of the plaintiff; and that plaintiff was not so entitled at the commencement of this suit.

The defendant says that the city of St. Louis is entitled, and was entitled at the commencement of this suit, to the premises in the petition of the plaintiff described, and to the possession thereof; and that said premises are parcel of the land confirmed to the inhabitants of the town of St. Louis, as common, by the first section of the act of Congress of 13th June, 1812, entitled "An act making further provision for settling the claims to land in the Territory of Missouri."

And defendant denies that the premises mentioned in the petition as held adversely to the plaintiff, by the defendant, are part of any land confirmed to the said city of Carondelet, or to any person or persons under whom said city of Carondelet claims to hold.

And having so answered the said city of St. Louis, defendant prays to be hence dismissed with her reasonable costs.

THOS. T. GANTT,
City Counsellor.

Thomas T. Gantt, being duly sworn, says, on his oath *says* he verily believes the aforegoing answer and the facts therein stated to be true.

THOS. T. GANT.

Sworn to before me this 17th day of May, 1855.

C. A. MANTZ, *Clerk.*
By J. B. WALSH, *Deputy.*

Amended Petition filed.

And afterwards the following proceedings were had in this cause, to wit:

March Term, 1855.—Tuesday, June 5th, 1855.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS. } Amended Petition filed.

(Amended petition withdrawn. See following entries.—Clerk.)

Jury sworn.—Trial prog'sd and cont'd.—Agreement of parties filed to withd'w am'd petition.—Amended petition withdrawn.

And afterwards the following further proceedings were had in this cause, to wit:

March Term, 1856.—Friday, May 16th, 1856.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS.

Now at this day come said parties by their attorneys, and thereupon came also a jury, to wit:

Peter Sibert, Philip Lutsinger, William Parker, Elija W. Payne, Nathaniel Robinson, Jesse Angel, John Clayton, Francis Ganaill, Alfred Smith, Frederick Coons, John Furrow and Elihu Angel, twelve good and lawful men, who being duly elected, tried and sworn, well and truly to try the issues joined between the parties in this cause, and a true verdict give according to the evidence, wherefore the trial progressed; but not being fully ended at the adjournment of court, is continued until to-morrow.

Agreement of parties filed to withdraw the amended petition in this cause, and amended petition withdrawn.

Trial Continued.

And afterwards the following further proceedings were had in this cause, to wit:

Saturday, May 17th, 1856.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS.

Now at this day come again the said parties by their attorneys, and also come the jury heretofore sworn in this cause, and thereupon the trial progressed; but not being fully ended, this cause is continued till Monday, the 19th inst.

Trial ended.—Verdict for Def't.

And afterwards the following further proceedings were had in this cause, to wit:

Monday, May 19th, 1856.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS.

Now at this day come again said parties by their attorneys, and also come the jury heretofore sworn in this cause; therefore the trial progressed; and being fully ended, the jury aforesaid, on their oaths aforesaid, say that they find for the defendant; therefore it is considered that the said plaintiff take nothing by his said petition, but that the said defendant go hence without day, and recover of the said plaintiff their costs and charges in this behalf expended, and have thereof execution.

Judgment of Supreme Court filed.—Judg't for Pl'ff, and cause remanded.

And afterwards the following further proceedings were had in this cause, to wit:

October Term, 1857.—Thursday, January 28th, 1858.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS.

Judgment of the supreme court filed in this cause; which judgment was rendered in favor of the plaintiff, and cause remanded for a new trial.

Opinion of the Supreme Court filed.

And afterwards the following further proceedings were had in this cause, to wit:

Wednesday, February 17th, 1858.

THE CITY OF CARONDELET vs. THE CITY OF ST. LOUIS. } Opinion of the Supreme Court filed in this cause.

Special Venire ordered and case set for trial.

And afterwards, to wit, on the same day, the following further proceedings were had in this cause, to wit:

THE CITY OF CARONDELET vs. THE CITY OF ST. LOUIS. } Special Venire ordered.

Now at this day come the attorneys for the plaintiff, and on their application, it is ordered by the court that a special venire issue to the sheriff of the county of St. Louis, commanding him to summon eighteen good and lawful men, outside of the townships and cities of Carondelet and St. Louis, to try the issues in the case of the City of Carondelet vs. The City of St. Louis, set for trial on Monday, February 22d, 1858.

Which special venire is in the words and figures following, to wit:

Special Veinre.

THE STATE OF MISSOURI,
The County of St. Louis.

To the Sheriff of the County of St. Louis, greeting:

You are hereby commanded to summon eighteen good and lawful men of your county, (outside of the townships of St. Louis and Carondelet,) that they be and appear before our honorable St. Louis land court, now in session, on Monday, the twenty-second day of February, A. D. 1858, at the hour of ten of the clock of that day precisely, then and there to serve as a special jury to try the issues joined between the city of Carondelet against the city of St. Louis, then and there to serve as jurors, and have you t n and there this writ, with the names of those on whom you exec te the same thereon endorsed.

Witness Charles A. Mantz, clerk of our St Louis land court, with the seal thereof hereto affixed at office, in the city of St. Louis, this 18th day of February, A. D. 1858.

CHARLES A. MANTZ,
Clerk St. Louis Land Court.

Sheriff's Return.

Upon which special venire the sheriff made his return in the words and figures following, to wit:

Executed this writ in the county of St. Louis, on the 22d day of

February, 1858, by summoning the following named gentlemen to serve in the St. Louis land court, in the case of the City of Carondelet vs. The City of St. Louis, to wit: David Thomas, C. C. Wise, W. D. Sappington, Wm. M. Walton, Robert M. Hanna, Christopher Hawkin, Alex. Perry, Benjamin Douglass, Sam'l James, John Higgins, Geo. M. Moore, Alex. McEllhaney, Auguste Aubuchon, Samuel Myerson, Dennis Crowley, Louis Hall, Colmore Nutt, Joseph Farrell, all good and lawful men of the county of St. Louis, and outside of the townships of St. Louis and Carondelet.

JAS. CASTELLO, *Sheriff.*
By JAS. OWENS, *Deputy.*

Dep'ns for Pl'ff opened and filed.

And afterwards the following further proceedings were had in this cause, to wit:

Saturday, February 20th, 1858.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS.

Depositions for the plaintiff, opened and filed in this cause; (for which depositions see bill of exceptions.)

Jury sworn.—Trial progressed.

And afterwards the following further proceedings were had in this cause, to wit:

Monday, February 22d, 1858.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS. } Trial begun.

Now at this day come said parties by their respective attorneys, and thereupon come also a jury, to wit: David Thomas, C. C. Wise, W. D. Sappington, Wm. M. Walton, Robert M. Hanna, Alex. Perry, Benjamin Douglass, Samuel James, John Higgins, George M. Moore, Dennis Crowley, and Colman Nutt, twelve good and lawful men, who being duly elected, tried and sworn, well and truly to try the issues joined between the parties herein, and a true verdict render according to the evidence, therefore the trial progressed, and not being fully terminated, is continued until to-morrow morning.

Trial progressed.

And afterwards the following further proceedings were had in this cause, to wit:

Tuesday, February 23d, 1858.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS. } Trial progressed.

Now at this day come said parties by their respective attorneys, and thereupon come also the jury heretofore sworn in this cause, therefore the trial progressed, and not being fully terminated, is continued until to-morrow morning.

Trial progressed and continued.

And afterwards the following further proceedings were had in this cause, to wit:

Wednesday, February 24th, 1858.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS. } Trial progressed.

Now at this day come again said parties by their respective attorneys, and thereupon came also the jury heretofore sworn in this cause, therefore the trial progressed, and not being fully terminated, is continued until to-morrow morning.

Trial progressed and continued.

And afterwards the following further proceedings were had in this cause, to wit:

Thursday, February 25th, 1858.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS. } Trial progressed.

Now again at this day come said parties by their respective attorneys, and thereupon come also the jury heretofore sworn in this cause, therefore the trial progressed, and not being fully terminated, is continued until to-morrow morning.

Trial progressed and continued.

And afterwards the following further proceedings were had in this cause, to wit:

Friday, February 26th, 1858.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS. } Trial progressed.

Now again at this day come said parties by their respective attorneys, and thereupon come also the jury heretofore sworn in this

cause, therefore the trial progressed, and not being fully terminated, the same is continued until to-morrow morning.

Trial progressed and continued.

And afterwards the following further proceedings were had in this cause, to wit:

Saturday, February 27th, 1858.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS. } Trial progressed.

Now again at this day come said parties by their respective attorneys, and thereupon come also the jury heretofore sworn in this cause, therefore the trial progressed, and not being fully terminated, is continued until Monday morning, March 1st, 1858.

Trial progressed and continued.

And afterwards the following further proceedings were had in this cause, to wit:

Monday, March 1st, 1858.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS. } Trial progressed.

Now again at this day come said parties by their respective attorneys, and thereupon come also the jury heretofore sworn in this cause, therefore the trial progressed, and not being fully terminated, is continued until to-morrow morning.

Trial progressed and continued.

And afterwards the following further proceedings were had in this cause, to wit:

Tuesday, March 2d, 1858.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS. } Trial progressed.

Now again at this day come said parties by their respective attorneys, and thereupon come also the jury heretofore sworn in this cause, therefore the trial progressed, and not being fully terminated, is continued until to-morrow morning.

Trial progressed and continued.

And afterwards the following further proceedings were had in this cause, to wit:

Wednesday, March 3d, 1858.

THE CITY OF CARONDELET, vs. THE CITY OF ST. LOUIS. } Trial Progressed.

Now again at this day, come said parties by their respective attorneys, and thereupon come also the jury heretofore sworn in this cause, therefore the trial progressed, and not being fully terminated, is continued until to-morrow morning.

Trial ended—Verdict for Def't—Verdict filed.

And afterwards, the following further proceedings were had in this cause, to wit:

Thursday, March 4th, 1848.

THE CITY OF CARONDELET, vs. THE CITY OF ST. LOUIS, } Trial ended—Judgment.

Now again at this day, come said parties by their respective attorneys, and thereupon come the jury heretofore sworn in this cause, therefore the trial progressed, and being fully terminated, the jury as aforesaid, on their oaths aforesaid, find for the defendant. It is therefere upon the finding of the jury as aforesaid, ordered and adjudged by the court, that the plaintiff take nothing by its suit, but that the defendant go hence without day, and recover of said plaintiff its costs and charges herein expended, and have execution therefor.

Verdict filed in this cause.

Motion for new Trial filed, sub. and overruled—Stip'tn as to Bill of Exceptions filed.

And afterwards the following further proceedings were had in this cause, to wit:

Friday, March 5th, 1858.

THE CITY OF CARONDELET, vs. THE CITY OF ST. LOUIS,

Motion for a new trial filed in this cause, and the same being submitted to the court, it is ordered and adjudged that said motion be overruled. Stipulation as to bill of exceptions filed in this cause. (For which motion for new trial and stipulation as to bill of exceptions, "see bill of exceptions."

Second Stipult'n as to bill of Exceptions filed.

And afterwards the following further proceedings were had in this cause, to wit:

Saturday, March 6, 1858.

THE CITY OF CARONDELET,
vs.
THE CITY OF ST. LOUIS.

Second stipulation as to bill of exceptions filed in this cause. (For which 2d stipulation as to bill of exceptions, see "bill of exceptions.")

Bill of Exceptions filed.

And afterwards the following further proceedings were had in this cause, to wit:

March Term, 1858—Tuesday, March 16th, 1858

THE CITY OF CARONDELET,
vs.
THE CITY OF ST. LOUIS,

Bill of exceptions filed in this cause; which bill of exceptions is in words and figures as follows, to wit:

Bill of Exceptions.

CITY OF CARONDELET,
vs.
CITY OF ST. LOUIS,
St. Louis Land Court—Bill of Exceptions.

Be it remembered, that on the trial of this cause, the parties gave the following evidence to the jury.

Plaintiff read to the jury the deposition of Antoine Smith, as follows:

Deposition of Antoine Smith.

Antoine Smith, of lawful age, being produced and sworn, on his oath declares and says, that he is not able to explain himself in the English language without the medium of an interpreter, the French language being his vernacular tongue, and that he does not understand the English language. Whereupon, the undersigned justices, administer to him the oath in the French language, and proceed to take his examination in that language, as follows, to wit:

Question. Quel age avez vous et ou demeurez vous?

Reponse. J'ai quatrovingts ans, et je demeure a la ville anciennoment appelee Florissant, maintenant appelee St. Ferdinand, dans le comte de St. Louis.

Question. Ou etes-vous ne?

Reponse. Je suis ne'en Canada. Je suis venu a St Louis a l'age de dix huit ans, ou j'ai reside quatroze ans avant le chagement du gouvernement Espagnol aceliu du gouvernement des Etatis Unis. A cette epoque j'ai pris residence Florissant ou j'ai demeure jusqu a present

Question. Depuis votre arivee dans ce pays avez vous en connaissance des communeo de Carondelet et de St. Louis? Si votre reponse est affirmation, dites ceque vous en connaissez?

Reponse. J'en ai connaissance. La commune de St. Louis, partait de la demi-lune, allant au sud jusqu'a Chesnut street dans la ville de St. Louis, de la ou partait a l'ouest un peu sur le sud jusqu'a la fountaine de la vielle Fleure ou de la vielle Jannette qui etait la meme fontaine; cette ligne arrivait jusq'au trait quarre du champ common de la barriere des Noyers; ensuite elle couvait a l'est a razerle cote nord du champ de Carondelet et elle aboutissoileau Mississippi, au beau millieu du "parie de sucre" et cette derniere ligne etait la ligne de division entre les communes de Carondelet et de St. Louis.

Il y avait une borne en pierre plantee sur le beau millieu du "parie de sucre," pour marquer cette ligne de division entre les deux communes. Si cette borne existe encore, je n'en sais rien mou souvenir de cette ligne s'etend jusqu'a soixante et trois ans passes. Il y avait alors une cloture de separation entre les deux communes, et dans cette cloture une barriere tous pres a l'ouest du, "Parie de sucre," pour admettre le passage des gens de Carondelet et de St. Louis. J'ai buche du bois par intervalles avec Francois la Riviere, le vieux ville maire et sou garcon, qui avaient etabli nu chantier pour bucher du bois aussi ou cote nord de cette cloture. J'ai vu cette cloture mainte et mainte fois. Par la negligence des passants, la barriere etait laisso bien souvent ouverte, de sorte que les animaux des gens de St. Louis s'echappaient pour gagner le marameo enfin la cloture pour cette cause ful aliattai jusqu'au champ de Carondelet la balance de la cloture de division a toujours reste jusqu'a cinq ou six ans avant le changement du gouvernement. Les gens de la barriere des Noyers out ensuite maintence cette balance de cloture de division jusqu'a cinq ou six ans apres le changement du gouvernement.

Question. Savez-vous, si la ligne et la cloture de division douc vous avez ci-dessus parle, etait respectee et reconnue par les habitants de Carondelet et de St. Louis comme etant la ligne et la cloture de separation entre les communes de St. Louis et de Carondelet?

Reponse. Oui, je le sais, car tous les habitants de chaque ville, qui avaient des terres d'nu bord ou d'autre et qui avaient des animaux a garder etaient obliges de faires leurs portions de cette cloture, et si ils ne le faissant pas volunterement, le syndic du gouvernement les y obligointe, aussi long temps que la cloture etait de bout, les

habitants de St. Louis et de Carondelet, ne pouvaient passer ni d'nu bord ni de l'autre pour le bois ou le paturaze de leurs animaux, nais apres qu'elle fut abattue, je ne sais pas quels arrangements ils out pris mutuellement.

Question. Avez-vous vu et reconna le "Parie de sucre" dernierement?

Reponse. Oui, je l'ai va et reconnu aujour d'hui en venant ni a Carondelet. Je connais ce "Parie de sucre" parfaitement bien, et je pouvais, dans ma memoire tracer apen pres lecours de la ligne et cloture de separation entre les deux communes, dont j'ai ci-dessus parlie si ma vue etait aussi conne a present qu'elle etait dans urow jeune temps, je ne crois pas que je pourrait m'y tromper de grand chose.

Question. Comment se servait ou de la part de St. Louis et de Carondelet de ces deux communes?

Reponse. De la part dergens de St. Louis et de Carondelet respectivement, ils se servaient de leurs communes respectives pour leurs besoins de paturage, de chauffage, de bois de batisse d'entourage et generalement pour tous leurs besoins respectifs.

Question. Quelle etait l'etendue de lacommune de Carondelet au sud de la ligne de separation que vous avez ci-desus mentionne?

Reponse. J'ai toujours entendu dire, que la commune de Vide Poche s'etendait-decette ligne jusqu'an Maramec, au sud.

Question. Combien de terre, dans letemps des Espagnols ou le gouvernement Espagnol, entre la ligne du Parie de sucre que vous avez ci-dessus mentionne, la lignie nord de la ville de Carondelet le Mississippi et le champ commune de Carondelet apportenait a la ville de Carondelet comme commune?

Reponse. Toute la terre dans ces limites appartenait a la ville de Carondelet sous le gouvernement Espagnol comme commune.

Question. Avez-vous aucun interest dans aucune propriete ou bien fond en de dans de la ville de Carondelet, ou de la commune de Carondelet?

Reponse. Je n'en ai jamais en, et je presume jamais n'en avoir.

his
ANTOINE ✕ SMITH.
mark.

STATE OF MISSOURI,
County of St. Louis, ss.

We the undersigned, Bernard Poepping and Auguste Gamache, justices of the peace, within and for the county aforesaid, do hereby certify, that the above deponent Antoine Smith, whose place of residence is in Florissant, in the county and State aforesaid, was by us sworn in the French language, to testify the whole truth of his knowledge touching the matters and things set forth in the annexed petition; that the deponent was examined in said language and his examination reduced to writing, and that the same was

distinctly read to the deponent and subscribed by him in our presence, on the ninth day of September, eighteen hundred and fifty-two, between the hours of eight o'clock in the forenoon, and eight o'clock of the afternoon of that day, at the City Hall, in the city of Carondelet, in the county and State aforesaid.

Given and certified the ninth day of September, A. D. 1852.

BERNARD POEPPING,
AUGUSTE GAMACHE,
Justices of the Peace.

Translatiom of Ant. Smith's Deposition.

Question. How old are you, and where do you live?

Answer. I am eighty years ld, and I live in a town anciently called Florissant, now called St. Ferdinand, in the county of St. Louis.

Question. Where were you born?

Answer. I was born in Canada, I came to St. Louis at the age of eighteen, where I have resided fourteeen years before the change of the Spanish government to that of the United States. At that epoch I took up my residence in Florissant where I have resided ever since.

Question. Since your arrival in this country have you had any knowledge of the commons of Carondelet and St. Louis? If your answer be in the affirmative, state that which you know about them.

Answer. I am acquainted with them. The common of St Louis started from the Half-moon, running southwardly to Chesnut street in the city of St. Louis; thence it went westwardly a little to the south, to the fountain of the old woman Flora, or of old Janette, which is the same spring. This line reached the rectangle entres carre of the common field of barriere des Noyers; thence it ran eastwardly grazing the north line of the common field of Carondelet, and terminated at the Mississippi, in the centre of the "Sugar Loaf," and this last line was the division line between the commons of Carondelet and St. Louis. There was a corner stone planted on the centre of the "Sugar Loaf" to mark the dividing line between the two commons. I do not know whether this corner stone is still in existence. My recollection of this line goes back sixty-three years. There was then a dividing fence between the two commons, and a gate near to, and west of the "Sugar Loaf," for the passage of people from Carondelet and St. Louis. I have at intervals cut wood with Francois Lariviere, the old ville maire, and his boy who had established a shanty to cut wood also on the north side of this fence. I have seen this fence over and over again.

Through the negligence of the passengers the gate was often left open, so that the cattle of the St. Louis people escaped in order to reach the Maramec, at least the fence was on this account thrown

down to the common field of Carondelet. The balance of the dividing fence has always remained, until five or six years before the change of government. The people of barriere des Noyers have there retained the remainder of the dividing fence until five or six years after the change of government.

Question. Do you know whether the line and dividing fence, of which you have spoken, was respected and recognised as the line and fence of separation between the commons of St. Louis and Carondelet?

Answer. Yes, I know it, for all the inhabitants of each town who owned lands on one side or the other, and who had cattle to watch, were obliged to make their portion of that fence, and if they did not do so voluntarily the syndic of the government would force them to do so. As long as the fence was standing the inhabitants of St. Louis and Carondelet could not pass from one side to the other for wood or pasturage for their cattle, but do not know what arrangements they made between each other after the fence was thrown down.

Question. Have you seen and recognised the "Sugar-loaf" to-day?

Answer. Yes, I have seen and recognised it to-day, in coming to Carondelet; I know this "Sugar Loaf" perfectly well, and I can in my memory trace near about the course of the line and fence of separation between the two commons of which I have spoken. If my sight were as good now as it was in my younger days, I do not believe I could be much mistaken.

Question. How were the two commons used on the part of St. Louis and Carondelet?

Answer. On the part of the people of St. Louis and Carondelet, respectively, the commons were used for pasturage, feed, building, wood, for enclosures, and for all their wants in general.

Question. How far did the common of Carondelet extend south of the line of separation which you have above mentioned?

Answer. I have always heard that the common of Vide Poche extended from said line to the Meramec in the south.

Question. How much land, at the time of the Spaniards or the Spanish government, between the above mentioned "Sugar Loaf" line, the line north of the town of Carondelet, the Mississippi and the common-field of Carondelet, belonged to the town of Carondelet as commons?

Answer. All the land within those limits belonged to the town of Carondelet under the Spanish government, as commons.

Question. Have you any interest in any property within the town of Carondelet or in the common of Carondelet?

Answer. I have never had any, and do not expect ever to require any.

his
ANTOINE ⋈ SMITH.
mark.

Bill of Exceptions.—Deposition of Paul Robert.

Also the deposition of Paul Robert, as follows:

Paul Robert, being produced, sworn and examined, on his oath, deposeth and saith:

Question. How old are you?

Answer. I am sixty-two years of age.

Question. Where were you born?

Answer. I was born in the village (now city) of Carondelet.

Question. Where has been your place of residence?

Answer. My principal place of residence has been in the village (now city) of Carondelet, where I now reside.

Question. Had the town or village of Carondelet any common during the existence of the Spanish government?

Answer. Yes.

Question. Where was the northern boundary line of the Carondelet common during the existence of the Spanish government?

Answer. The northern boundary line began at the Mississippi river, at a point well known by the name of the "Sugar Loaf," thence westwardly to or near the northeast corner of the common fields of Carondelet.

Question. How far south from the Sugar Loaf line did the common extend?

Answer. It extended a great deal farther south than the village of Carondelet.

Question. How much of the territory lying between the "Sugar Loaf" line and the village of Carondelet, and between the Mississippi river and the common fields of Carondelet, was common in the time of the Spanish government?

Answer. It was all common of Carondelet during the Spanish government.

Question. What use did the inhabitants of Carondelet make of the common alluded to during the Spanish government?

Answer. To graze their horses and cattle, to make use of the wood far building purposes, to obtain rails for fences, and for such other uses and purposes as commons are generally used.

his
PAUL ⋈ ROBERT.
mark.

STATE OF MISSOURI,
County of St. Louis, ss.

We, the undersigned, Bernard Poepping and Auguste Gamache,

justices of the peace within and for the county aforesaid, do hereby certify that Paul Robert, the deponent, whose place of residence is in the city of Carondelet, in the county and State aforesaid, was by us sworn to testify the whole truth, of his knowledge, touching the matters and things set forth in the annexed petition; that deponent was examined, and his examination reduced to writing, was distinctly read to the deponent and subscribed by him in our presence, on the seventh day of September, eighteen hundred and fifty-two, between the hours of eight o'clock in the forenoon and eight o'clock of the afternoon of that day, at the City Hall, in the city of Carondelet, in the county and State aforesaid.

Given and certified the seventh day of September, A. D. 1852.

BERNARD POEPPING,
AUGUSTE GAMACHE,
Justices of the Peace.

Bill of Exceptions.—Aug. Gamache's Test'ny.

Auguste Gamache, a witness for plaintiff, testified:

I was 60 years old on 27th May, 1857. I know where the line of division between the commons of St. Louis and Carondelet is; it was at the Sugar Loaf, as we call it. The Sugar Loaf is close by the river, on the rock. I can't tell the distance. I remember the common fields of Carondelet. I remember of being where I was told, that is, the Barrieres des Noyers. I remember St. Arnaud Micheau; he was not anciently a citizen of Carondelet, but he had been there a long time. I remember that Micheau had a shot-tower; that factory was in the neighborhood of Carondelet. I have been told that Mr. McPherson—I do not know him—claimed a piece of land there. Mr. McPherson was to the north and Mr. Micheau to the south of the road. Micheau was on the right hand side of the road coming this way; Mr. McPherson was on the left hand side, going. I can't say how long ago it was that Micheau built his shot factory. It was 34 or 35 years ago, more or less, that Micheau went there; he went there by permission of Carondelet. He staid there I don't know how long. According to the best of my opinion, he remained there until he died. I remember the sale of St. Louis commons in 1836; I can't tell whether Micheau was dead then or not. Micheau had his house and other little buildings in possession. I can't tell how much ground he had enclosed. I can't tell how far Micheau was south of the Sugar Loaf; about ten arpents, more or less. Micheau had a fence; I don't know how much land was found. I know it from them who signed a paper among themselves, giving Micheau permission to settle there; that there was a paper. I know that Micheau claimed permission from Carondelet, because he asked permission, and then they run a subscription list, and they signed it, and I know they gave him permission in that.

Cross-examination.

On cross-examination, witness testified:

I have seen the shot-tower; it was a wooden frame; it must have been 50 or 60 feet high above the surface of the bluff. I suppose the tower must have been 20 feet square. Micheau built a stone house. We had 2 or 3 acres enclosed; at any rate 2 acres. I never knew of any fence from Sugar Loaf to Carondelet. I knew a fence in front of common-fields, of 50 years past. I suppose the cattle would go from Carondelet north, but the people of Carondelet would, some of them, go north of that line, but it was forbidden, for that line belonged on the north to St. Louis. I don't remember whether any of the people of Carondelet cut wood north of the line at Sugar Loaf. I was a farmer. I cut wood and pastured cattle north of the village of Carondelet. The commons of Carondelet extended south; I can't say how far. The commons extended below the river Desperes; they did not go to the Maramec; they went to the river Amatisse. There was good pasture and wood down to the Amatisse. I have always been an inhabitant of Carondelet.

Bill of Exceptions.—Deposition of Pierre Chouteau, Jr.

Plaintiff then read the deposition of Pierre Chouteau, jr., of 17th June, 1856, as follows:

In the St. Louis Land Court of St. Louis county.

CITY OF CARONDELET, Pl'ff,
vs.
CITY OF ST. LOUIS, Def't.

To the Defendants: Take notice, that depositions of witnesses in the above entitled cause, to be read in evidence on the part of the plaintiff, will be taken at the office of Hill, Grover & Hill, att'ys at law in the city of St. Louis, in the county of St. Louis and State of Missouri, on the 17th day of June, 1856, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day; and that the taking of the same will be continued from day to day at the same place and between the same hours, until completed.

B. A. & D. W. HILL,
Att'ys for Pl'ff.

Served June 18th, 1856, in person.

J. KAHN.

(Upon the back of the foregoing notice are the words and figures following, to wit: Clerk.)

STATE OF MISSOURI,
County of St. Louis, ss.

Joseph Kahn, being duly sworn, says that he served the within

notice upon the city of St. Louis, defendant, by delivering a true copy thereof to John How, mayor of said city, on the 13th day of June, at the said city, in said county.

J. KAHN.

Sworn to and subscribed before me this 17th June, 1856.
[SEAL.] CHARLES H. TILLSON,
Notary Public.

Deposition of witnesses produced, sworn, and examined at the office of Grover and Hill, att'ys at law in the city of St. Louis, in the county of St. Louis, and State of Missouri, before me, Charles H. Tillson, a notary public within and for said county, in a certain cause now pending in the St. Louis land court, State of Missouri, between the city of Carondelet, plaintiff, and the city of St. Louis, defendant, on the part of the plaintiff.

Pierre Chouteau, jr., of lawful age, being produced, sworn, and examined on the part of the plaintiff, deposes and says:

I was sixty-seven years old last January. I was born and raised in the town and city of St. Louis. My father was a resident of the old town of St. Louis from its establishment in 1764. I recollect the town of Carondelet when I was a small boy. I recollect the common fields of Carondelet. Carondelet had commons on the north of the town. There was a fence starting from the Sugar Loaf which run to the northeast corner of the common fields of Carondelet. There was a gate in that fence on the road from St. Louis to Carondelet. The road was near (not very near) the Sugar Loaf. The land south of that fence to the village was used as a common by the Carondelet people, and the land north of the fence was used as a common by the people of St. Louis. The fence was, as I understood, the dividing line between the commons of St. Louis and Carondelet.

Cross-examination.

Cross-examination.

I suppose it was between 1798 and 1800 that I saw this fence. It was before the change of government. The Sugar Loaf is a little mound near the river. I cannot say how large it is. I never went to the mound before 1803. I only saw it from the road. The fence struck the Sugar Loaf, as near as I could see from the road, near the middle of it. It was a straight fence with pickets and rails. I have never been at the northeast corner of the common fields of Carondelet. I don't know who owned the north common-field lot of the Carondelet commons. I don't know long the fence remained. I understood from all the people that the fence was the dividing line. There were frequent difficulties between the people of St. Louis and Carondelet about repairing this fence. Each town was

bound to keep up its part of the fence. I don't know which part St. Louis was to keep up or Carondelet to keep up.

P. CHOUTEAU, JR.

I, Charles H. Tillson, a notary public within and for the county of St. Louis, and State of Missouri, do hereby certify, that in pursuance of the annexed notice, Pierre Chouteau, jr., the deponent, whose place of residence is St. Louis, Missouri, came before me at the office of Hill, Grover & Hill, att'ys at law in the city of St. Louis, county and State aforesaid, who was there by me sworn to testify the whole truth of his knowledge touching the matter in controversy in the cause aforesaid; that deponent was examined, and his examination reduced to writing by me, and subscribed by said deponent in my presence, on the 17th day of June, A. D. 1856, between the hours of 8 o'clock in the forenoon and six o'clock in the afternoon of said day, at said place; and his said deposition is now herewith returned.

Given and certified in the county of St. Louis, State of Missouri, this 17th day of June, A. D. 1856, as witness my hand and official seal.

[SEAL.]

CHARLES H. TILLSON,
Notary Public, St. Louis County, Missouri.

Bill of Exceptions.—Hyacinth Pigeon's Testimony.

Hyacinth Pigeon, being duly sworn, testified:

I am now 78 years old. I have always lived in Vide Poche, (Carondelet.) After 1806, I resided always at Carondelet. I resided two years in St. Louis before 1806. I came to St. Louis in 1804. I was seven years at Detroit before coming here. I was born at Canada. The line of division between Carondelet and St. Louis was shown to me. I saw the fence—where there had been a fence. I know where the Sugar Loaf was. I know the Carondelet common fields. I know the northeast corner of the common fields. I think the fence began on the Mississippi, running over the hill of the Sugar Loaf to the place where the stone was. I never traced the line; it seems to me that the fence run toward the north corner of the common fields. I have known these commons ever since 1806. I saw that fence the year after I came here. It was shown to me. I was 27 years of age when I first saw the fence. I can't tell how long they used the commons. They told me there was a fence and a gate between the commons of St. Louis and Carondelet; they showed me the gate 50 times. I know St. Arnaud Micheau. I went to bring him there when he built the factory. St. Arnaud Micheau, after he built the factory, lived in his stone house and then in his little frame south of it. The factory was somewhat below the Sugar Loaf in the common of Carondelet. I can't remember the year; it was 25 or 30 years ago; can't tell exactly. Micheau went on the commons of Carondelet by the

permission of a petition run through the town for permission to Micheau to go there. I can't tell how long a piece of ground he had. I can't tell how long Micheau staid there; he must have remained there 15 or 20 years. I know the fountain called the Cave spring; it is below the new factory. The spring of the Grand Coulé and the Cave spring are different springs. There is such a spring as the Cavern spring, but I never went to it; I have passed it 100 times. Between the landing of Carondelet and St. Louis there are 3 springs, one at the factory of James Evans, one at the Grand Coulé, and one at another place above. I know of but one spring between Carondelet and the Sugar Loaf, which is at the cave or cavern. The factory of Jim Evans is a little higher up than this spring. I knew of a man by the name of L. M. Eiler. I was a chain carrier with him. I do not remember when Eiler surveyed the village of Carondelet; I know he surveyed.

Cross-examination.

On cross-examination, witness testified:

I think the Cavern spring is ¾ths of a mile below Micheau's factory. It is counted one mile from the factory to Carondelet. I brought Micheau to Carondelet from a little down on this side of Herculaneum. The fence was not up when I came to St. Louis. It had been burnt. I don't know how long it been burnt before I came here. I did not inquire of the fence, nor *where* it had been destroyed. I saw the rails and the logs of the fence along the line, but I did not inquire when it had been destroyed. The ground between the Sugar Loaf and the common fields of Carondelet were covered with the timber—fine timber. It was not thickly timbered; it was fairly timbered; it was handsome, fine timber. There were hazel bushes there and young cheneaux. There were not a great many hazel bushes there; you could go through there without any trouble. I was a laborer; cut wood and worked for the farmers. I boated in the barges till the steamboats came. When I found a trip, I made it; and then I worked among the farmers; and when there was no work I amused myself. They showed me the stone where the fence ended. The stone was a little more on the other side than on this. At the Sugar Loaf there is a bluff bank. The rock was stuck into the ground in the Sugar Loaf at the base of it. I was not more than a year here when they told me where the line was. From 1806 I have always lived in Carondelet. I have owned property there; I have none now. The little I had I divided it between my chilren. I got the lot in 1818, and afterwards the corporation made me pay for it. I never came to the court-house before to give testimony. I testified when Mr. Primin came to my house 2 or 3, or 4 years ago. I know that Mr. Primin came to my house 4 years ago. It was not a process that I know of. Mr. Primin did not tell me whether there was any law suit or not. I think I signed the paper for Micheau to build a factory.

Plaintiff read to the jury the survey by the United States of the common field of Carondelet of 1834, made by Brown, as follows:

(For field-notes of this survey and plat, see page 225 of this transcript. Clerk.)

Bill of Exceptions.—Henry Morin's Testimony.

Henry Morin, being duly sworn, testified:

I am 66 years old last August. I have lived in St. Louis since my birth. The division line of the commons between St. Louis and Carondelet, as I have always been told, was at the Sugar Loaf. This side belonged to St. Louis; the other side to Carondelet. I can't say whether the people of St. Louis had a right to use the commons of Carondelet below the Sugar Loaf. The people of Carondelet cut wood between the Sugar Loaf and the village of Carondelet. I can remember the inhabitants of Carondelet cutting wood there for 50 years, more or less. I have seen the stone at then Sugar Loaf; it was a large stone. The stone was about the middle of the road, a little more on one side than the other. The road passed on both sides of the Sugar Loaf.

On cross-examination, witness testified:

I went to school till 17 years of age, and then went a voyaging, and have continued ever since.

I have been 5 years in the mountains without coming here—sometimes 2 years, sometimes 1 year. For 37 years I have been voyaging for the American Fur Company. I always saw that stone when a boy going to Carondelet and back. We always said, there is the dividing stone. It must have been 55 or 56 years ago when I first understood that was the boundary stone.

Question. Did not the people generally go and cut wood anywhere?

Answer. I have not seen hay cut; I have seen wood cut. I have seen the people of St. Louis cut wood in the common of St. Louis, and the people of Carondelet in the commons of Carondelet. I have cut wood in the commons of St. Louis at 17 or 18 years old. There was some timber between St. Louis and Carondelet, and some bushes and cheneaux. In some places the cheneaux were very thick, and in some places it was open ground. I saw a fence of cheneaux or poles from the Sugar Loaf and westwardly a little north. When I saw it, it was *m*ashed down. I was 17 or 18 or 20 years old when I saw the fence there; it was washed down; it was in patches where the fire had burned through. I never followed the fence. It looked as if it had been *m*ashed down a long time; the poles were rotten. The cattle could pass up and down it easily. The first time I went to Carondelet I was 10 or 15 years old. I went down to see my brother-in-law, Mr. Bissonett. I did not notice the fence at first; but I was 20 years old when I first

took cognizance of it. There was nothing to prevent the cattle from passing when I first saw the place. I never testified before in this case. I came to the court-house 2 years ago, when I was first spoken to about this matter. I can't tell how many men, women, and children there were in St. Louis in ancient times. There might have been about 2 or 300 families in St. Louis. I don't know the value of the land in the country.

Cross-examination.

On re-examination, witness testified:

I saw the Sugar Loaf stone when I was quite young. I did not know then that it was the boundary. I must have been 15 years old when they told me that is the boundary.

The rock was in the low place in the road. The Sugar Loaf was on the border of the Missouri, and from there where this stone was it was 2 or 300 yards.

I mean by the Missouri, the river Mississippi.

On cross-examination, witness testified:

Mr. Tayél, Mr. Barada and Desnoyer told me this is the stone of the dividing line.

They told me about 17 or 18, 16 years—I might have been 20 years old. I was down at Carondelet a frolicing and eating pan cakes, and at a ball, and they told me the commons went up to the Grand Coulé at the Sugar Loaf, and that was their boundary.

Cha's E. Saloman's Testimony.

Charles E. Salomon, being duly sworn, testified:

I am county surveyor. I have been a surveyor for 15 years. I have surveyed lands lying between the common fields of Carondelet and the Mississippi river, south of the Sugar Loaf mound. This plat of survey which I have in my hand is a survey made by myself. The north $\frac{1}{2}$ of block 93 is south of the line run from the Sugar Loaf to the northeast corner of common fields of Carondelet. Northeast $\frac{1}{4}$ is 10 acres. Northwest $\frac{1}{4}$ is 10 acres. It is about 18 acres. Bounded north by block 88, east by east $\frac{1}{2}$ block 93, south by Brown's line of the Carondelet commons, and west by block 92, east $\frac{1}{2}$ of block 89. 20 acres in this part. Bounded north by block 83, east by block 88, south by block 92, and west by west $\frac{1}{2}$ of block 89. Southwest $\frac{1}{4}$ of block 88 south of the Sugar Loaf line, contains 10 acres. Bounded north by northwest $\frac{1}{4}$ of block 88, east by southeast $\frac{1}{4}$ block 88, south by block 93, west by block 89. Southwest $\frac{1}{4}$ of block 83 is partly south of the Sugar Loaf line; about 9 acres of it is south, bounded north by the line to Sugar Loaf, east by block 84, south by block 89, west by west $\frac{1}{2}$ of block 83.

Lots 1 and 2 in sub-division No. 1.

Lot 1 is south of Sugar (Loaf) line.. 207 $\frac{6}{12}$ feet long by 27 $\frac{6}{12}$ feet deep.

No. 257 - fol: 22.

91 90 89

A. Daughan J. H. Fillman Jean Pierre Porcelli John W. Taylor.

Kansas Avenue

B. McAnulty. First Michigan Ave. Carondelet Park. East Michigan Ave. Minnesota Avenue

Penn sylvania Avenue F. P. Blair. John Witkmell

Nebraska Avenue

City. A. G. Bragg & others Home of the Friendless A. Wittmer

B. McAnulty Carondelet Road California Avenue

Charles L. Tucker 94 Jno. Dunn Lot 1 Lot 2 Lot 3 87 J. W. Skinner A. G. Bragg T. Andrews

Mississippi River. Milton Knox Avenue E. H. Shepard

Ohio

Iron Mountain Rail Road. Jefferson Avenue

88

Of lot 2 the western half is south of Sugar Loaf line 25 feet front by 210 feet deep.

Lots from 1 to 24 in sub-division 2 of lot 4.

They are south of this line. Lots from 1 to 15 are 130 feet by 25 ft.

The corner lots are 33 feet 9 inches front.

Lots from 16 to 24 are 25 feet front by 125 feet to 183 feet deep.

Sub-division one and two of lot 4, are bounded north by block 85, east by Iron Mountain RR., south by lot 3, and west by block 88.

I made this survey by the order of the city of St. Louis, in May, 1854.

I did all this work on the ground.

At the time I made this survey these blocks and lots were vacant—not occupied by any body.

The map south of Sugar Loaf is as follows:

[*See original, page* 22.]

Cross-examination.

On cross-examination, witness testified:

I know a survey of the St. Louis commons made by Deward. The south line of my survey corresponds with the south line of my survey of the commons.

This survey agrees with the south line of Jos. C. Brown's survey of the St. Louis commons. I saw improvements on different parts of this property. Home of the friendless, and others, are on this property. Those improvements were there since 1850. Some of them are costly improvements. The grounds are, some of them, in high cultivation.

On re-examination, witness testified:

The order of survey to me was made in Feb'y, 1854. They sold some other lots there in 1855. They sold south of the line in 1854. They sold, in 1854, lots in sub-division No. 1. They sold lots south and north of the line of the Sugar Loaf line.

Amable Chartrand's Testimony.

Amable Chartrand. I am 67 years old. I was born in Carondelet. I have always lived there, but have voyaged sometimes. The village of Carondelet had commons, in Spanish times. The commons extended on the north to the Sugar Loaf which we recognized. The commons run west from the Sugar Loaf to the north corner of the common fields.

There was always an enclosure of the common fields of Carondelet. The fence of the common fields has always been there during my remembrance. The people of Carondelet used these lands for commons, as far as I can recollect, for wood and pasturage of cattle.

Each one who had a piece of land in the common fields made his own fence. There were boundaries of the lots in the common fields of Carondelet.

The people of Carondelet always used this land as commons, as far as I can recollect. I remember St. Arnaud Micheau. He had a shot factory below the Sugar Loaf. It was within the commons of Carondelet. It was about ½ mile below the Sugar Loaf, more or less. I saw Micheau there 27 years ago, more or less. He went there to build a factory, by permission of the people of Carondelet. They gave him permission to build a factory there. He lived there I can't say how long. The people of Carondelet used that land as commons during all my knowledge. They used it as commons for wood and pasturage. They used it as such when Micheau went there to build his factory.

On cross-examination, witness testified:

Never knew of any fence between the commons. The cattle grazed everywhere between St. Louis and Carondelet. I did not know of the people of Carondelet cutting wood up to St. Louis. The people of Carondelet worked the road up to the Grand Coulé. They always worked the road as far as the Grand Coulé, ¾ of a mile, more or less, above the Sugar Loaf. The people of St. Louis took care of the road from the Grand Coulé up to St. Louis.

The people of Carondelet did not cut wood up as far as the Grand Coule, to my knowledge. The cattle grazed up there all along the road, some of them would go further, and some of them would go shorter. Cattle and horses of St. Louis and Carondelet went back on the prairies and grazed also.

I have cut wood in the commons of Carondelet. Carpenter, plougher, and mower was my occupation. Pourcelli and Euge lived in the common fields of Carondelet. I knew them there a good while, say 37 or 38 years, more or less. I don't know whether Pourcelli or Euge lived there first. Pourcelli lived west of the commons. Pourcelli was to the south of the line of the commons of Carondelet on the north.

Question. Did the line of commons north strike the fence of Pourcelli?

Answer. It went to the land of Jos. Pierre Pourcelli, to the best of my opinion.

Question. On which side of Pourcelli did Euge lie, north or south?

Answer. He was north of John P. Pourcelli, to the best of my opinion.

According to the best of my opinion the line terminated somewhere in the street, then near Pourcelli's house. I don't know much about the places up there. I lived in the lower part of Carondelet. I can't hear well, and I speak to the best of my opinion. The occupant north of Euge was Dominique Euge. Don't re-

member the one north of the first Euge. One of Pourcelli's children was next south, and then Valle. I did not go often in that neighborhood. Pourcelli and the Euge's lived in the common fields of Carondelet.

Fred. Dent's Testimony.

Frederick Dent, being duly sworn, testified:

I came here in 1811. I know Don Antonio Soulard, surveyor of Upper Louisiana. I knew the commons of Carondelet, between the Sugar Loaf. I know the commons south of the river Des Peres. Don Antonio Soulard is dead; has been several years. I recollect of hearing his evidence in a justice's court. I had sent a man named Mallet for cutting wood south of the river Des Peres. Don Antonio Soulard and Mr. Pr. Choteau, and Auguste Chouteau, testified in 1824 or '5, or thereabouts. He testified that he was sent by the lieutenant governor to run a common for the people of Carondelet, and surveyed, commenced at the Sugar Loaf, and run west to the corner of the common-field lots of Carondelet. He then went to the southwest corner of the common fields, and started there and run to the river Des Peres. He said he was ordered to survey 6,000 arpens. I was very particular in asking this, because they claimed commons on the other side of the river Des Peres. He asked the people if they wanted any more commons; they said no, that they had more commons than money to pay him for surveying. The whole town (male part of it) he said were present at the survey.

On cross-examination, witness testified:

He did not say what year he did this. It was under the Spanish government. He was then about 60 years old. I did not ask him when he did this. Mr. Soulard was a Frenchman. He told me he came from France. He came here about the time of the French revolution. I first settled in St. Louis. I got my land in Carondelet, about 1820. Have continued a proprietor down there ever since. I was then at Carondelet during every week, in fall and spring, while I lived in St. Louis. There was a well-beaten road between Carondelet and St. Louis. There were no improvements between the arsenal and Carondelet. The country was covered with trees. When I came here, and since, I saw the people of Carondelet cut wood. I have seen them cutting at the Grand Coule. It is above the Sugar Loaf ¼ of a mile. I have seen the people of St. Louis cutting down below the Sugar Loaf. It was not used as a common between them. They pastured cattle there. There was no fence. I have heard there had been a fence there. I have seen them both cut wood. This was a matter of no moment then. This land was worth $1 25 an acre. I don't know that they ever went out of the commons to cut wood. I have had suits with Carondelet. She sued me 15 years ago in the State

courts in this county. They sued me for a piece of land below the river Des Peres. They introduced the survey of Brown. Auguste and Peter Chouteau, sen'r, were present when Soulard testified as above stated. They testified also with regard to the extent of the commons. Auguste and Peter Chouteau thought the commons extended south of the river Des Peres, but could not say how far. They said that a right had been given to Dunn to build a mill on the banks of the river Des Peres south. They did not say how far the commons went below the river Des Peres, but spoke of its being 6,000 arpens altogether. They, both of them, said the boundary between the commons of St. Louis and Carondelet was the Sugar Loaf. I know the location of the mill. It was on the bank south, near the bridge, across the Des Peres, about $\frac{3}{4}$ or 1 mile from the mouth.

On re-examination witness testified.

I know where Wm. Warren's place was. It was below the Sugar Loaf $\frac{1}{4}$th of a mile on the Carondelet road, within the commons of Carondeldt, as laid down by Soulard. He built a house. He built there shortly after the sale of the lots by St. Louis. He had 10 or 20 acres. I don't recollect. He was a carriage maker or repairer. I don't know he ever manufactured any.

Possession of the city admitted as to all lots not sold.

Bill of Exceptions.—Part'n of Deps. of Dr. Nick's Demenil's, in relation to rents and profits of the ground.

So much of Dr. Nicholas Demenil's deposition read as relates to the rents and profits of the ground for a thirty years lease from this date; what will the lease be worth per acre per year?

Objected to as above by the def'ts counsel.

Answer. I think it worth about $20 per acre per year.

Question by same. From the first of January, 1853, what would this ground lease for, upon a thirty year lease?

Objected to by same as irrelevant and incompetent.

Answer. The land would have leased for less in 1853 than now, because the ground was less valuable then; it would lease for about ten dollars per acre per year from that time.

Plaintiff here closed in chief.

Bill of Exceptions.

Defendant, in defence, gave the following evidence to the jury:

1st. Defendant offers the claim of the inhabitants of Carondelet, of 17th June, 1808, for 6,000 arpens, to which the plaintiff objects, as not appearing to have been authorized by the inhabitants of Carondelet, and as not authorized by any law of the United States.

The court overrules the said objection of plaintiff, and admits said claim to the jury, as follows:

Claim of Inhab'ts of Carondelet for 6,000 *arpens, (which includes the proceed'gs of Old Board,* 1808 *and* 1812.)

To the Recorder of Land Claims for the Territory of Louisiana.

Take notice that we, the inhabitants and settlers of the village Vide Poche, in the district of St. Louis, claim title to 6,000 arpens of land, situate, adjoining said village, by virtue of a concesssion from Zenon Trudeau, lieut'nt governor of Upper Louisiana, dated the 7th December, 1796.

St. Louis, 7th June, 1808.

On the part of said inhabitants.

BT. LAJOYE, *Fils.*

Sa
LOUIS ⋈ MENARD, *Pere.*
marque.

A Monsieur Don Zenon Trudeau, Capitaine au Regiment fixe de la Louisianne, Lieutenant Governeur and Commandant en Chef de la partie occidentale des Illinois.

L'etat deplorable sans le quel se trouver aujour d'hui & pour la suite le village Carondelet par l'exportation du bois, à l'honneur de vous exposer quaprés la raquette qu'ls a en l'honneur de vous presenter le 5 Sbre Jernier. Pour obtenir la continuation de leur terre, vous leur avés dit ne pouvoir pas accorder a sa demmande, que cependent vous alliez faire vos efforts pour leur donner quirrente arpens au dessus de leur pare.

Le village vous prie bien de vouloir faire attention qu' jourd'hui il a un grand encouragement par ce moulin and que son intention est d'ensemencer le plus qu'il pourra. Cest pour quoi il charge le Sr. Gamache de vous presenter celle-ci esperant que vous voudrez. Monsieur, avoir egard a sa demmande, & a sa misere dans la quelle il va être plougé qu'il vous plaise lui accorder la continuation des terres prenant pour borne celle du Sr. Coustans au Mississippi et la reviere Des Peres pour borne venant au même village Carondelet il espere tout de votre bonté, & il croit que vous voudrés bien accorder a sa demmande il ne cessera de rendre grace á vos bontés au village Carondelet le 6 Xbre, 1796.

Sa
JN. BTE. ⋈ GAMACHE.
marque.

La terre qui est demandé est, compris dans se qui a été reservé pour fournir le bois necessaire au village a Carondelet et a demande que fait le Sr. Gamache ne pent avoir bien ainsi que toutes concessions accordées dans la direction de la ligne prise au bout des terres du dit village et courant paralettement au Mississippi cent-cinq'te arpens plus bas.

ZENON TRUDEAU.

St. Louis, le 7 Decembre, 1796.

HAUTE LOUSIANE, VILLAGE DE CARONDELET,
District de St. Louis des Illinois.

L. B., No. 139, fo. 27.

Nous soussignées arpenteur, commissioné par le gouvernement certifious a tous ceux a qu'il apartiendra qu' aujourd'hui 21 Xbre, en vertu de l'ordre que Mr. le l'nt g'eur passée a Mr. de Treget, cap'ne comm'dt du dit village pour enjoindre aux habitans d'avoir a faire connaitre la ligne d'une terre qui leur a été concédé en datte du 7 Xbre, 1796. Laquette signe doit étre parallelle a cettes de Mrs. ante Reilhe, et Alvares; les dits habitants en presance de leur com'dt sont convenues de faire tirer leur ligne a praudre de la derniére borne passée a l'extremitée de la profundeur de leurs terres; les quelles avaient été pressédament arpentée par par Mr. P're Chouteau, au vertu d'un ordre de Mr. le l'nt g'eur ayant relevé l'air de vent deces mêmes terres j'ai trouvé qu'elles convaient S. 28° O. Fai suivé cette même ligne 23 arp. 3 p'co ½ distance a la quelle j'ai rancontré la rivière Des Peres, l'extremite de la ligne sur le bord de la ditte riviere a été bornée avec nue pierre ayant pour temoini deux pierres a fusil, et nue balle de Plomb a plattie la terre du Sr. Alvares devant être distante de la ditte borne de 24 p'ds en suivan parallellement la même ligne, et pour que les dits habitants puissent constater, j'ai delirré le present.

St. Louis, des Illinois, le 25th X'bre, 1797.

ANTONIO SOULARD.

Te artifie partout ou besoin sera que Messieurs les habitants du village de Carondelet, ni out requi de leur mesurer ou faire mesurer par nu de mes deputes une partie de terre qui leur fut accordee pour commun par le l'nt g'eur Dn. Zenon Trudeau, cette terre dut être arpentée par Monsr. Bartelemi cousin qui ce vandit au village de Carondelet a cet effet, au moment. J'operer sa bussole ce trouve or (hors). J'état de lui servir inconvenient qui a empaiché le dit arpentage d'avoir bien, le peude temp qu'il y avoit á le revoir m'a empêché de pouvoir satis faire aux instances qui m'out été faites par les citoyens de l'etablissement de Carondelet. Eu foi de quoi j'ai delivré le present aux interessés pour leur servir et valoir partout ou besoin.

St. Louis, Fevrier, 1806.

ANTONIO SOULARD,
Surveyor Gen'l Ty. Loui'a.

"*Proceed's of Old Board*, 1808 *and* 1812."

Wednesday, June 15th, 1808.

Board met pursuant to adjournment.

Present, the hon'l John B. C. Lucas and Clement B. Penrose.

The inhabitants of Vide Poche claiming 6,000 arpens of land as a Common.

On application of said inhabitants the board order a survey of

the land from the outer end of their field lots, below the village, to the Mississippi, a single line for the purpose of ascertaining the length of said line in French arpens, survey to be returned this day 4 weeks.

Board adjourned till Monday next, nine o'clock a. m.

See minutes, book No. 3, ps. 206 and 207.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.

Monday morning, July 11th, 1808.

Board met pursuant to adjournment. Present, the hon'l John B. C. Lucas, Clement B. Penrose.

The inhabitants of the village of Vide Poche, claiming 6,000 arpens of land, adjoining said village, on the lower side, as a common, district of St. Louis produces to the board a notice of said claim to the recorder, dated 7th June, 1808; a petition from Jean Baptiste Gamache to Don Zenon Trudeau, lieutenant governor, praying for a grant of land below said village, dated 6th December, 1796, and the decree of the said lieutenant governor thereon, stateing that the land demanded is within the limits of land reserved for the purpose of furnishing wood necessary for the use of the village of Carondelet, and that the demand which is made by Gamache cannot take place, nor no other concession be granted in the direction of a line taken from the end of the field lots of the village and running parallel with the Mississippi further down said river one hundred and fifty arpens. Dated St. Louis, December 7th, 1796.

Testimony Perpetuated on the Rough Minutes, June 15th and 24th, 1808.

August Chouteau, sen'r, sworn, says, that he knows the inhabitants of Vide Poche since the year 1770; have made use of the land lying below the field lots and village of Vide Poche, along the Mississippi, as their commons, and ever since that time have taken therefrom their fencing and fuel; but does not know the extent of the claim; that 25 years ago a man by the name of André built, from the wood of said commons, and on the same, a boat; that he commenced the building of another; complaint was then made by the inhabitants of said village to the lieutenant governor, who ordered the said André to desist from his work, as the land belonged to said inhabitants; that about 25 years ago there was about 30 families of farming people who had no other pursuits; that since that time, until 1803, there continued to be about the same number of families; that the land which each of said inhabitants possess individually would not be sufficient to furnish them with fuel, and that without said commons they will be obliged to desert said village; that the lands held individually was purposely chosen for cultivation and without firewood.

Testimony Perpetuated on Rough Minutes, June 24th, 1808.

Jean Baptist Provenché sworn, says, that the village of Carondelet has been, to his knowledge, established at least forty years ago; that the village contained, 25 years ago, about 40 families, all farmers; since about 35 or 36 years ago the said families have been using wood from the land now claimed, and ever since made use of the same as a common; in the year 1803 there was about 40 families; that on the land claimed individually by said families there is no fuel, and that they have no other place to get fuel or fencing from but said commons.

Rough Minutes, June 15, 1858.

The board order a survey of the land from the outer end of their field lots, below the village, to the Mississippi, a single line, for the purpose of ascertaining the length of said line in French arpens; survey to be returned this day four weeks.

The survey ordered by the board, in the claim of the inhabitants of Vide Poche, is this day returned and said claim laid over for decision.

The words one hundred and fifty arpens interlined before signed.

The board adjourned till Wednesday next, nine o'clock, a. m.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.

See minutes, book No. 3, ps. 216, 217 and 218.

Thursday January 2d, 1812.

Board met. Present, J. B. C. Lucas, Clement B. Penrose and Frederick Bates, commissioners.

Inhabitants of the village of Vide Poche or Carondelet, claiming 6,000 arpens of land as a commons.

See book No. 3, pages 206 and 217.

It is the opinion of a majority of the board that this claim ought not to be granted, Clement B. Penrose, commissioner, voting for a confirmation thereof, under the usages and customs of the Spanish government.

Board adjonrned till Monday next, nine o'clock a. m.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

See minutes, book N. 5, ps. 551, 552 and 553.

Recorder's Office, St. Louis, Missouri, 27*th August,* 1840.

I certify the foregoing to be truly copied from the original documents on file, excepting the proceedings of the board of commissioners, which are truly transcribed from the minutes, all on file and of record in this office.

F. R. CONWAY,
U. S. Recorder of Land Titles in the State of Missouri.

Bill of Exceptions.

To the admission of the same the plaintiff then and there objected and excepted.

Defendant offered the petition of Gamache, of the 6th of December, 1796, and the reply of the lieutenant governor of 7th of December 1796, and the certificate of A. Soulard, of 25th December, 1797, and the other certificate of 1806, as also the proceedings before the old board of 1808 and 1812, and the evidence and survey of 1808, by Bent, to the admission of each of which, as evidence in this cause, the plaintiff then and there objected, for the same reasons as last above mentioned; but the court overruled said objections and admitted said papers and each of them in evidence, as follows:

Pet'n of Gamache, 7th Dec'r, 1796.

To Mr. Don Zenon Trudeau, Captain of the Appointed Regiment of Louisiana, Lieutenant Governor and Commandant in Chief of the western part of Illinois:

Considering the deplorable condition in which the village of Carondelet is now, and shall be for the future, because of the exportation of woods, the inhabitants have the honor to expose to you that, after the petition which they had the honor to present you the fifth day of last October, in order to obtain the continuation of their land, you told them that their demand could not take place; but yet you were going to make your best efforts in order to grant them forty arpens above their park.

They ask you to take into consideration that this mill gives now a great encouragement, and that they intend to sow as much grain as possible.

Therefore, they intrust Mr. Gamache with the care of presenting to you these presents, and they hope that you will take into consideration their demand and the miserable condition in which they will be, and that you will grant them the continuation of the lands, taking as limits Constan's land, on the Mississippi side, and the river des Peres, leading to the same village of Carondelet.

They have full confidence in your kindness, and believing that you will grant them their demand, they will always thank you for your goodness.

Made at the village of Carondelet, the sixth day of December, seventeen hundred and ninety-six.

JN. BTE. sa ✕ marque. GAMACHE.

Reply of Lieutenant Governor, 7th Dec., 1796.

The land demanded is within the limits of land reserved for the purpose of furnishing wood necessary for the use of the village of Carondelet, and the demand which is made by Gamache cannot

take place, nor no other concession granted in the direction of a line taken from the end of the lands of the said village, and running parallel with the Mississippi one hundred and fifty arpens.

ZENON TRUDEAU.

St. Louis, Dec'r 7th, 1796.

Certificate of Ant. Soulard, 25 *Dec'r*, 1797.

UPPER LOUISIANA, VILLAGE OF CARONDELET,
District of St. Louis, Illinois.

I, the undersigned, surveyor commissioned by the government, to all whom these presents shall come, certify that, on this day, the twenty-first day of December, in virtue of the order issued from the lieutenant governor to Mr. de Friget, captain commandant at the said village, in order to require the inhabitants to make known the line of a land that has been granted to them, on the date of the seventh day of December, 1796, which line must be parallel to that of Mrrs. Ant'e Reilhe and Alvares, the said inhabitants, in presence of their commandant, have agreed to have their line drawn from the last limit posted at the extreme depth of their lands; which lands had been formerly surveyed by P're Chouteau, in virtue of an order from the lieutenant governor.

Having examined in what direction run the same lands, I found out that they were running S. 28° W.

I have followed that same line 23 arpents 3 pe's ½, at which distance I met the river des Peres.

The extremity of the line, on the edge of the said river, has been bounded with a stone and two flints, as a witness, and a bullet of lead flattened.

The land of Alvares must be 24 feet distant from the said boundary in following the same line in a parallel manner.

And I have delivered these presents, in order that the said inhabitants could verify the same.

ANTOINE SOULARD.

St. Louis of Illinois, the 25th December, 1797.

Certificate of Ante. Soulard, Feb'y 28th, 1806.

I certify, everywhere it is wanted, that the inhabitants of the village of Carondelet have requested me to survey, or to have surveyed by one of my deputies, a part of land which has been granted to them as common by the lieutenant governor, Don Zenon Trudeau.

Mr. Bartholemy was appointed to survey the same; he went to the village of Carondelet for that purpose.

In setting to work, his compass was found out of service, which event prevented the said surveying from taking place. From want of time, I have been prevented from complying with the request made to me by the citizens of the establishment of Carondelet.

№ 259 - page 30.

C.

Fence on outside of the field
N. 35 1/2 C.
S. 50 1/2 C. 1 Ch. 25 = 82 1/2 Links.
Crosses the Road 8 Ch from thence
on 42 1/2 Links.
Fence on the innenboundary
of the field N. 35 1/2 C.
Village of Vide Poche
Mississippi

In faith of which I have delivered these presents to those interested, to use them as they want.

ANTOINE SOULARD,
Surveyor Gen'l T"y Loui'a.

St. Louis, February 28th, 1806.

For "Proceedings of old board of 1808 and 1812," see pages 26, 28, of this transcript.

CLERK.

Evidence and Survey of 1808 *by Bent.*

[*Here follows map marked C, page* 30.]

Note.—The inhabitants of Vide Poche show me what they said was the outer end of their field lots, but could not find the N. W. corner.

I therefore measured a line between J. Manard and L. Lajoy to the southern boundary, on the course of S. 56½ E. 116 chs., and from thence 24 chs., on the same course to the Mississippi.

The S. W. corner could not be found either. The general course of the Mississippi for a considerable distance up and down from the point where my line intersected it, is S. 42° W.

The courses are according to the true meridian, and the admeasurement by such a chain as the law requires.

June 17th, 1808. Pursuant to an order of the honorable board of commissioners, under date of 15th June, 1808, I surveyed and measured the distance from the outer end of the field lots claimed by the inhabitants of Vide Poche to the Mississippi, and find the distance to be 48 French arpens one French perch and fifteen English feet and $\frac{6144}{1000}$ of a foot.

SILAS BENT,
Principal D'y Surveyor.

RECORDER'S OFFICE, ST. LOUIS, MISSOURI,
24*th Dec'r*, 1839.

The above is a true copy taken from the original document on file in this office.

F. R. CONWAY,
U. S. Recorder of Land Titles in the State of Missouri.

Bill of Exceptions.

And to the admission of and every of the foregoing papers and proceedings the plaintiff then and there excepted.

The defendant next offered the survey of the United States by Rector, to which the plaintiff objects as never having been approved, as not authorized by any law of the United States, as not being recognised by the United States, and as not being properly certified, or in any manner an authentic document.

In faith of which I have delivered these presents to those interested, to use them as they want.

ANTOINE SOULARD,
Surveyor Gen'l T"y Loui'a.

St. Louis, February 28th, 1806.

For "Proceedings of old board of 1808 and 1812," see pages 26, 28, of this transcript.

CLERK.

Evidence and Survey of 1808 *by Bent.*

[*Here follows map marked C, page* 30.]

Note.—The inhabitants of Vide Poche show me what they said was the outer end of their field lots, but could not find the N. W. corner.

I therefore measured a line between J. Manard and L. Lajoy to the southern boundary, on the course of S. 56½ E. 116 chs., and from thence 24 chs., on the same course to the Mississippi.

The S. W. corner could not be found either. The general course of the Mississippi for a considerable distance up and down from the point where my line intersected it, is S. 42° W.

The courses are according to the true meridian, and the admeasurement by such a chain as the law requires.

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SILAS BENT,
Principal D'y Surveyor.

RECORDER'S OFFICE, ST. LOUIS, MISSOURI,
24*th Dec'r*, 1839.

The above is a true copy taken from the original document on file in this office.

F. R. CONWAY,
U. S. Recorder of Land Titles in the State of Missouri.

Bill of Exceptions.

And to the admission of and every of the foregoing papers and proceedings the plaintiff then and there excepted.

The defendant next offered the survey of the United States by Rector, to which the plaintiff objects as never having been approved, as not authorized by any law of the United States, as not being recognised by the United States, and as not being properly certified, or in any manner an authentic document.

The court overrules the objection, and the survey and memorandum upon it was read to the jury as follows:

Survey of the U. S. by Rector, and Memorandum thereon.

[*Here follows map, marked D, page* 32.]

Surveyed the Commons of Carondelet.

Began at a stone on the bank of the Mississippi river, N. E. corner; thence N. 82° W. 35.00 to B. O. 18 in. dia., 68 links north side of the S. E. corner of Pierre Delor's, 1½ arpens on the east side of the common-field of Carondelet; thence with the field, S. 15° W. 26.96; thence S. 21 W. 48.17 to the S. E. corner of Doctor Pall's land, and the S. E. do. of the field of Carondelet; thence N. 56 W. 118.0 to the S. W. corner of the field; thence S. 36 W. 58.69 to the river des Peres, 100 links wide, runs S. 48° E. 315 chains to Gravel creek, 50 links wide, runs S. E. 437 ch. 50 lks. to the S. W. corner of the commons; thence S. 54 E. 264 chs. O. to a stone on the bank of the Mississippi river; thence up the river with the meanders of the same, N. 10 E. 195 ch., N. 17 E. 38, N. 10 E. 25, N. 4 W. 51 ch., N. 20 E. 18 ch., N. 40 E. 25 ch., to the mouth of river *de Pare*, 2 c. 50 lk. wide; thence N. 47 E. 7.50, N. 32 E. 58 c. 50 l., N. 7 W. 15.00, N. 22 E. 21.19 to the S. E. corner of the village of Carondelet; thence up the river, N. 42 E. 54 c. 50 l., N. 35 E. 4.91. Set stone N. E. corner of the village of Carondelet, which village is two lots deep of 300 French feet each, with a street 36 do. French wide. The lots run from the river N. 59 W. 53 c. 91 l. to the northeast corner of the commons and place of beginning.

SURVEYOR'S OFFICE, ST. LOUIS,
15*th April*, 1840.

The foregoing notes are correctly copied from the original field-notes on file in this office of the survey of the Carondelet common, as executed by Elias Rector, deputy surveyor. The said notes are without date, but the survey was executed and the notes taken before the year 1817. They were, to my knowledge, on file in this office in the fore part of that year, and have always since that time been acted upon as the official notes and survey of said common, as supposed to be confirmed by the act of Congress of the 13th June, 1812. This plat is conformable to said notes.

This survey having been executed before the survey of the adjoining public lands, and the public surveys not having been properly connected therewith, the adjoining fractions outside of the

common were withheld from sale at the sale of the other lands in to. 43 and 44 N., R. 6 E., and 43 N., R. 7 E.

WILLIAM MILBURN,
Surveyor of the Public Lands in the States of Illinois and Missouri.

Bill of Exceptions.

To the admission of which survey of Rector the plaintiff then and there excepted.

Defendant then offered the ordinances of the board of trustees of Carondelet of 1834, and the plaintiff objects that they are upon their face only extracts or parts of the proceedings, and that they do not appear to be authorized proceedings. The court overruled the objections, and the plaintiff then and there excepted thereto, and the said proceedings were read as follows:

Extracts of the Proc's of B'd of Trust. of Carondelet, of 1834.

Extracts from the Journal of the Proceedings of the Board of Trustees of the town of Carondelet.

March 8th, 1834.

The board being organized by notice being given—

Present, Messrs. Leitensdorfer, Fasseau, Chattillion, Colburn, and Lefavre.

The board being called to order, the object of the meeting being stated by Mr. Colburn, and on motion of Mr. Colburn, the following resolution was unanimously adopted:

Resolved, That a committee of two be appointed to wait upon Joseph C. Brown, esq., and ascertain when and what time he will survey the commons belonging to Carondelet, and that the register write a communication to him on the subject.

Whereupon the chairman appointed Messrs. Colburn and Fasseau that committee.

On motion of Mr. Fasseau, the board adjourned.

March 10th, 1834.

The board being organized by notice being given thereof—

Present, Messrs. Leitensdorfer, Fasseau, Chattillion, Colburn, and Lefavre.

The board being called to order, the committee appointed to wait upon Joseph C. Brown report, they have peformed the duty assigned them, and here beg leave to introduce Joseph C. Brown.

Whereupon Mr. Joseph C. Brown reports to the board that he is duly commissioned and authorized to survey the commons of Carondelet, with his instructions from the surveyor general at St. Louis, and does here most respectfully notify this honorable board that he will commence the survey of said commons on to-morrow;

and the chairman appoints Louis Fasseau and Joseph Chattillion as superintendents in the survey, and that they accompany the surveyor through the said survey.

On motion of Mr. Colburn, the chairman appoints Benoist Maréchal, John Bpt. Gamache, Gabriel Constant, as chain-carriers, and Baptiste Chattillion for other purposes.

March 29th, 1834.

The board being called by previous notice from the chairman—Present, Messrs. Leitensdorfer, Fasseau, Chattillion, Colburn, and Lefavre.

The board being called to order, Mr. Lafavre's school report was read and ordered to lay on the table.

Mr. Fasseau and Chattillion report, that Joseph C. Brown has completed the survey of the commons, and the duties assigned them *was* duly performed.

On motion of Mr. Colburn, it was ordered, that all persons employed in the survey should now be paid, viz: Baptiste Gamache and Benoist Maréchal have an extra compensation of two dollars allowed them, and one dollar per day for their services; Baptiste Chattillion and Gabriel Constant, each one dollar per day for their services; and that Louis Fasseau and Joseph Chattillion be allowed one dollar $\frac{25}{100}$ per day for services rendered in the survey, and that the treasurer is hereby authorized to pay the same.

On motion of Messrs. Fasseau and Colburn, one dollar $\frac{25}{100}$ for their services, in performing certain duties, obtaining papers, and searching the land office, &c.

The above sum to be paid for every day employed in such service, and that it is hereby authorized to pay the same out of any moneys in treasury.

Mr. Colburn's bill allowed for 6 days' hire of horses and carriage, one dollar $\frac{25}{100}$ per day for services rendered.

On motion of Mr. Fasseau, the board hereby appoint Joseph Chattillion to set up a stone every $\frac{1}{2}$ mile on the line of the commons where necessary, in order to designate the line properly, and employ such aid as it may require, and that the treasurer pay the bills as handed by said Chattillion.

July 9th, 1834.

The board convened by notice from the chairman: Present, Messrs. Shultz, (chairman,) Guye, Chartran, Robert and Gamache.

Mr. Chartrand offers the following resolution, which was read and unanimously adopted: Resolved, that Peter J. Shoults, chairman of the Board of Trustees for the town of Carondelet, is hereby authorized to search the different offices in St. Louis for a copy of the survey of the commons of said town, and obtain certain papers

relative to the same, for the purpose of obtaining sufficient title to the commons, which copies and records shall be filed in the office of the register in said town.

On motion of Mr. Guye, the board claims no attendance for this day.

On motion of Mr. Robert, the board adjourned till July 14th, 1834.

Monday, Sept. 1st, 1834.

The board met: Present, Messrs. Shoultz, (chairman,) Chartran. John Eugene Leitensdorfer, David Briggs and Henry Chouquette produced their certificate of an election, from under the hands of the judges appointed to hold an election *election* for three trustees, on Saturday, the 23d August. Whereupon, Messrs Leitensdorfer, Briggs, and Chouquette were declared to be duly elected trustees for the town of Carondelet, to fill the vacancies occurred in this board.

The register lays before the board the survey and confirmation certificate of the commons of Carondelet, the register being ordered to read the same; after which,

On motion of Mr. Chartrand, it is *was* ordered, that the said survey and confirmation certificate be filed in this office, and that the register have the survey framed for the benefit of the town.

F. R. Conway's account allowed for the copy of, or confirmation certificate. Charles De Ward's amount allowed for a copy of the survey.

STATE OF MISSOURI,
County of St. Louis, ss.

I, Bernard Poepping, register of the city of Carondelet, do certify that the foregoing extracts from the proceedings of the board of trustees of the former town of Carondelet are true and correct copies from the journal of said proceedings, as the same remain of record in this office.

In testimony whereof, I have hereto set my hand and affixed [SEAL.] the city seal, this sixth day of January, A. D. 1854.

BERNARD POEPPING, *Register.*

Bill of Exceptions.

United States survey of Jos. C. Brown, No. 2,965; present No. 3,102. Certificate of survey 29th July, 1834, offered in evidence.

The plaintiff objects to this survey, that it is not an approved survey, and that the Commissioner of the General Land Office had the superintending control of the surveys of the commons, and that there is no approval of the survey by the Commissioner of the General Land Office according to law, nor is there any order of the Commissioner of the General Land Office for this survey shown.

The court overruled said objections, and admitted the said survey in evidence, to which the plaintiff then and there excepted.

Said survey was read as follows:

U. S. Survey of Jos. C. Brown, No. 2,965, &c.

[*For map see original, page* 36.]

Survey No. 2,965, (present number 3,102.)

Plat and description of the survey of the commons of Carondelet, as executed by Jos. C. Brown, deputy surveyor, from the 11th to the 17th of March, 1834, under instructions of the 10th of February, 1834, containing 9,905 $\frac{2}{100}$ acres of land.

Beginning at two stones, a corner of this survey, and southeast corner of the common field of Carondelet, one of which stones is 15 inches long, 3 inches thick and 12 inches broad, the other thicker and longer and 8 inches broad; thence N. 56¼° W., along the southern boundary of said common field, which is a line of this survey, 4 chains 50 links, and old stone, 42 chains and 50 links, to a branch 10 links wide, which runs southward 118 chains and 16 links, to a stone, the S. W. corner of said common field and corner of this survey, on the eastern boundary line of Alvarez's survey; thence S. 35½° W., with Alvarez's line, 60 chains, to the left bank of river des Peres, 153 links wide, which runs eastward, 120 chains, (Saunders's door is 35 links westward,) 193 chains 85 links, a spring branch 4 links wide runs eastward 201 chains and 36 links, Alverez's S. E. corner stone; thence N. 54° 20′ W., with Alvarez's S. W. boundary line 183 links, to a post at the intersection of the old of this survey with Alvarez's southwestern boundary line, (which is 14 chains 6 links S 54° 20′ E. of the corner in said line to section 13, 14, 23 and 24, township 44 north, range 6 east, of the 5th principal meridian,) from which post a hickory 11 inches in diameter, marked as a sight-tree of old, bears 36° E., 39 links, and a white oak, 25 inches in diameter, bears N. 54° W., 52 links distant; thence S. 36° 20′ W., with the old line, 19 chains and 81 links, to the line between sections 23 and 24, in said township, a post, corner to fractional sections 23 and 24; 24 chains and 31 links south of the corner to sections 13, 14, 23 and 24, aforesaid, from which post a black-jack 6 inches in diameter bears N. 38½ W., 55½ links, and a post-oak, 15 inches in diameter, bears N. 7¼° E., 129 links distant, 20 chains 71 links, an old stone in the line; 62 chains 61 links, a road leading to Jefferson barracks; 87 chains and 21 links, to a point on the line between sections 23 and 26 in said township, corner to said fractional sections 23 and 26, (226 links east of the quarter section corner,) from which post a red oak 9 inches in diameter bears N. 47¼ W., 98 links, and a red oak 14 inches in diameter bears S. 43¼ W., 161 links

chains 50 links, (at 9 chains on this line is the mouth of Martigny creek;) N. 56° E., 3.00 chains; N. 18° E., 15 chains; N. 10½° E., 8.00 chains; N. 11¾° E., 47 chains 34 links; N. 2½° E., 9 chains; N. 10° E., 31 chains; (the flag-staff at Jefferson barracks bears N. 3° 20′ W.;) N. 19½° E., 52 chains and 38 links, (hence the flag-staff at Jefferson barracks bears S. 87¼ W.;) N. 10° E., 34 chains and 20 links; N. 1 W., 17 chains 50 links; N. 5¾° E., 11 chains; N. 3½° E., 6 chains; N. 8¾° E., 5 chains 30 links; N. 12° E., 9 chains; N. 24¼° E., 11 chains; N. 31° E., 10 chains; N. 44° E., 9 chains; N. 47° E., 9 chains 50 links; N. 43½° E., 10 chains 88 links; the mouth of river des Peres, N. 61½° E., 2 chains 54 links across the mouth of river des Peres; N. 47° E., 9 chains; N. 33¾° E., 13 chains 87 links; N. 30¼° E., 44 chains; N. 5. W., 13 chains 50 links; N. 14° E., 11 chains; N. 30½° E., 20 chains; N. 38° E., 38 chains; N. 52° E., 8 chains 72 links; N. 35 E., (3 chains 58 links to the south edge of the street that passes by and north of Colburn tavern, in the village of Carondelet,) in all this course 18 chains; N. 32¾° E., 41 chains 50 links; N. 56° W., 78 links, to the N. E. corner of this survey, which is a post on the bank of the Mississippi river, from which a sycamore 10 inches in diameter bears S. 12° E., 24 links, and an elm 11 inches in diameter bears N. 46° E., 38 links distant. The connection from this corner to the S. E. corner of the common of St. Louis is as follows, namely: S. 56° E., 78 links; N. 25¼° E., 11 chains and 90 links; from said N. E. corner of this survey of the commons of Carondelet, N. 82° W., 41 chains and 35 links to a stone, 18 inches long, 4 inches thick and 12 inches broad, and set 9 inches in the ground, with the edge east; the N. W. corner thereof, in the front line of the common-fields of the village of Carondelet, 5 chains and 72 links southward of the intersection of said front line with the south boundary line of the St. Louis commons; from said N. W. corner stone of the Carondelet commons, S. 14° 40′ W., along the front line of said common-fields, which is a line of this surver; at 70 links a stone; at 5 chains and 10 links a stone; at 9 chains 48 links a stone; at 18 chains 21 links a stone; at 26 chains 96 links a stone, one of the corners of this survey; all these stones set of old; thence S. 26° 10′ W., along another line of the front of said common-fields, 17 chains and 47 links, a stone corner of this survey, and also one of the corners to the common-field aforesaid; said stone is 27 inches long, 5 inches thick and 8 inches wide; thence S. 36° W., 25 chains and 64 links to the beginning.

SURVEYOR'S OFFICE, *St. Louis, 29th July*, 1834.

The foregoing plat and description of the survey of the commons of Carondelet, containing 9,905 $\frac{29}{100}$ acres, are conformable to the original field-notes on file in this office.

The said survey contains within its limits surveys No. 2,023, for

29.77 acres in the name of Gabriel Constant, under his confirmation for 33 arpents as represented on the plat. Also survey No. 904, for 544 $\frac{44}{100}$ acres in the name of Julien Chouquette, under his confirmation for 640 arpents.

Said survey of Chouquette is represented on the plat as accurately as practicable from the approximative data in the field-notes; which is the common call for the mouth of the river des Peres, in the field-notes of Chouquette's survey, and in the notes of the survey of the commons.

(Signed) E. T. LANGHAM,
Surveyor General of the Public Lands in the States of Illinois and Missouri.

OFFICE OF THE SURVEYOR GENERAL FOR ILLINOIS AND MISSOURI,
St. Louis, Nov. 29th, 1849.

The foregoing record of the plat and description of a survey of the commons of Carondelet on pages, one, two and three of his book is correctly copied from the original plat and description of said survey, approved by Surveyor General Langham, on the 29th of July, 1834, on page 76 of the 3d volume of Missouri plats, on file in this office.

The original number of the approved survey, "2,965," having been given to the survey of a claim of 32 arpents, confirmed to Benito Vasquez, situated in the commons of St. Louis, the number "3,102" has been adopted in lieu thereof, since which time the said survey of the commons of Carondelet has been known in this office as No. 3,102.

M. LEWIS CLARK,
Surveyor General of Ill's and Mo.

OFFICE OF THE SURVEYOR GENERAL,
St. Louis, Dec. 14th, 1850.

I certify that the foregoing plat and description of survey No. 3,102 (commons of Carondelet,) the certificate of approval of the 29th July, 1834, by Surveyor General Langham, and certificate of record of the surveyor general of the States of Illinois and Missouri of the 29th November, 1849, are correctly copied from pages 1, 2, 3 and 4, of the record of surveys of Carondelet lands now in this office.

M. LEWIS CLARK,
Surveyor General.

Bill of Exceptions.

Defendant offers the certificate of confirmation by the recorder of land titles for the commons of Carondelet, to which the plaintiff objects as not authorized by any law of the United States and as incompetent and irrelevant, but the court admitted the same as evidence to the jury, and the plaintiff then and there excepted.

The same is read as follows:

Certificate of Confirm'n by Recorder of Land Titles, &c.

OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, Missouri.

A record of confirmation certificates issued by F. R. Conway, recorder of land titles in the State of Missouri, on claims to town and village lots, out-lots and common-field lots, confirmed by the 1st section of the act of Congress of the 13th June, 1812, entitled "An act making further provision for settling the claims to land in the Territory of Missouri," in conformity to instructions from the Commissioner of the General Land Office of the 8th of February and 17th May, 1831; commencing on the 12th day of April, A. D. 1834.

(Signed) F. R. CONWAY,
Recorder of Land Titles in the State of Missouri.

No. 2.

OFFICE OF THE RECORDER OF LAND TITLES,
Saint Louis, Missouri.

It is hereby certified, that under the provisions of the first section of the act of Congress, approved on the 13th day of June, 1812, entitled "An act making further provision for settling the claims to land in the Territory of Missouri," and the several acts of Congress supplementary, or having reference thereto, approved on the 26th day of May, 1824, and the 27th day of January, 1831.

The inhabitants of the village of Carondelet, in the county of St. Louis, in this State, have been confirmed in their claim in common to six thousand arpens of land, being in townships 43 and 44 north, ranges 6 and 7 east of the 5th principal meridian. The same having been regularly surveyed, as appears by a plat and field-notes thereof, returned to this office by the surveyor of the lands of the United States in the States of Illinois and Missouri, certified by him on the 29th day of July, 1834, and numbered 2,965, which accompanies this certificate, and to which I refer for a more full and complete description of the tract above mentioned, containing, according to said survey and certificate, nine thousand nine hundred and five acres and twenty-nine hundreds of an acre.

In testimony whereof I have hereunto subscribed my name, this 22d day of August, A. D. 1834.

(Signed) F. R. CONWAY,
Recorder of Land Titles in the State of Missouri.

Delivered the original of the foregoing certificate, together with the survey therein mentioned, to the authorities of the village of Carondelet. (Signed) F. R. CONWAY,
Recorder of Land Titles in the State of Missouri.

OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, 6th January, 1854.

I certify that the foregoing is correctly transcribed from pages 1, 2, and 3 of the book of confirmation certificates, on file in this office.

ADOLPHE RENARD,
U. S. Recorder of Land Titles in the State of Missouri.

Bill of Exceptions.

Defendant offers the certificate of the register of Carondelet of certain proceedings before the board of trustees of Carondelet, of 11th April, 1839, and of 25th April, 1839, and 17th June, 1839, to which the plaintiff objects as not being authorized by any law, and as improperly certified. The court admitted the same as evidence to the jury, to which the plaintiff then and there excepted.

The said proceedings were read as follows:

Cert. of Reg'r of Car'et, of Proceedings, &c.

At a meeting of the board of trustees of the former town of Carondelet, held on the eleventh day of April, 1839, there were present Messrs. N. Paupe, Joseph Leblond, Louis Gayon, J. B. Menard, and Isidore Barada.

Amongst other proceedings, the following were had, to wit:

No. One.

"Mr. Louis Gayon makes motion, that the remainder of the commons north of river des Peres be surveyed into lots of different sizes, as will be hereafter provided. The yeas and nays being called on said motion, it passed unanimously.

"Whereupon Mr. Zenon Mackay, surveyor, comes forward and proposes to make said survey according to the directions of the board, at six dollars per day, by being furnished with hands sufficient to do the same, and make out a neat and explicit plat of the said survey for the additional sum of thirty dollars.

"On motion of J. Leblond, Mr. Mackay's proposal was unanimously accepted."

And at a meeting of the same board, held on the 25th day of April, 1839, there were present all the members.

Among others, the following proceedings were had, to wit:

No. Two.

"On motion of J. Leblond, Resolved, that the remainder of the commons north of river des Peres be leased at public vendue, on the eighth of July next and following days, and that the same be advertised in the Republican and German papers weekly, printed in the city of St. Louis."

And at a special meeting of said board, held on the seventeenth day of June, 1839, there were present Messrs. N. Paupe, L. Fassen, Joseph Leblond, J. B. Menard, and Isidore Barada.

And among others, the following proceedings were had, to wit:

No. Three.

"Mr. Joseph Leblond presents the following ordinance:

"An ordinance to lease the Carondelet commons north of river des Peres. (See Ordinance book, No. 51.)

"The ordinance having been read a first and second time, the board dispensed with the ordinary rule for a third reading, and it was unanimously passed."

STATE OF MISSOURI,
County of St. Louis, ss.

I, Bernard Poepping, register of the city of Carondelet, do certify that the foregoing extracts from the proceedings of the board of trustees of the former town of Carondelet, enclosed in quotation marks, and numbered one, two and three in red ink, are correct and true copies from the proceedings of said board under the respective dates above mentioned, as fully as the same remain of record in my office.

In testimony whereof I have hereto set my hand and affixed the seal of said city, at office, this twenty-third day of June, A. D. eighteen hundred and fifty-five.

[SEAL.]

BERNARD POEPPING, *Register.*

Bill of Exceptions.

Defendant offers the ordinance No. 51, for leasing the commons of Carondelet, to which the plaintiff objects as irrelevant and incompetent, but the court admits the same to be read to the jury, to which plaintiff then and there excepted.

The same was read, as follows:

Ord. No. 51 of Car'd'lt to lease Commons, &c.

No. 51. An ordinance to lease the Carondelet commons north of the river des Peres.

Be it ordained by the board of trustees of town of Carondelet, that on the fifteenth day of July, eighteen hundred and thirty-nine, and following days, all that portion of the Carondelet commons lying north of river des Peres shall be leased at public outcry to the highest and best bidder, for the term of ninety-nine years, and renewable forever, reserving rents to be paid annually to the said trustees or their successors agreeably to the following terms, to wit:

1st. Upon any sale the purchaser is not to pay the amount bid, but an interest of two per cent. a year on the purchase money as a yearly rent.

2d. At the end of ninety-nine years from the day of sale, and every ninety-nine years thereafter, the purchaser shall pay four per centum on the purchase money as a yearly rent.

3d. Should the interest remain unpaid for six months after due, the board of trustees may annul the sale, and proceed to sell again without molestation or hindrance on the part of the delinquent lessee.

4th. Upon all such sales deeds are to be executed in duplicate by the board of trustees, and signed and acknowledged by the purchasers, containing all the conditions and provisions which the board of trustees may establish to secure the payment and collections of the annual rent.

5th. If a purchaser neglect or refuse to execute such deed, the lot purchased may be resold; and if it should not bring the same first bid, the difference may be recovered from the first purchaser before a justice of the peace.

6th. The purchaser shall pay for the execution of each duplicate lease two dollars and a half; and also, for the expenses of the survey, as follows, to wit, for all lots or blocks of three arpens or under, $3 50; for all lots containing over three arpens thirty cents per arpent.

Passed by the board of trustees, June 17th, 1839.

Approved: NAS. PAUPE, *Chairman.*

Attest: P. L. McLAUGHLIN, *Reg.*

STATE OF MISSOURI,
County of St. Louis, ss.

I, Bernard Poepping, register of the city of Carondelet, do hereby certify that the foregoing ordinance, numbered 51, entitled "An ordinance to lease the Carondelet commons north of river des Peres," and passed by the board of trustees of the former town of Carondelet June 17th, 1839, is a true and correct copy of the original ordinance, as fully as the same now remains of record in my office.

In testimony whereof I have hereto set my hand, and affixed the seal of said city, at office, this twenty-third day of June, A. D. eighteen hundred and fifty-five.

[SEAL.]

BERNARD POEPPING, *Register.*

Bill of Exceptions.

Defendant offers the plat of survey of Zeno Mackay of the commons of Carondelet, north of the river des Peres, to which plaintiff objects that the same is not properly authenticated, that there are memoranda outside of survey incompetent, and is irrelevant and incompetent; but the court admitted the same to be read in evidence to the jury, to which the plaintiff then and there excepted.

The said was read and shown to the jury, as follows:

Plat of Survey of Zeno Mackay.

[For plat see original, page 43.]

The annexed plat represents a portion of the Carondelet commons of the town of Carondelet, which has been laid off and surveyed by order of the trustees of said town of Carondelet, a portion of which is bounded north by the common-fields of Carondelet, and a portion of it is bounded north by the common-fields of St. Louis, east by the Mississippi river, south by the river des Texas, and west by Alvarez's tracts of land; and I, Peter D. Barada, as chairman of the board of trustees of said town of Carondelet, do hereby declare that the streets and alleys as laid off upon said plat to be relinquished to the use of the public forever.

PETER D. BARRADA, [SEAL.]

Chairman of the Board of Trustees of the town of Carondelet.

Filed May 25th, 1847.

S. D. BARLOW, *Recorder.*

STATE OF MISSOURI,
County of St. Louis.

Be it remembered, on this 25th day of May, 1847, before me, the undersigned, clerk of the S. Louis county court, came Peter D. Barada, esq., chairman of the board of trustees of the town of Carondelet, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing, and as said chairman of the board of trustees of said town of Carondelet acknowledged the same to be his act and deed for the purposes therein expressed.

In testimony whereof I have hereto set my hand, and affix the seal of said court, at office, in St. Louis, the date last above written.

STEPHEN D. BARLOW, *Clerk.*

STATE OF MISSOURI,
County of St. Louis.

I, the undersigned, recorder in and for the county of St. Louis, certify the foregoing to be a true copy of a plat of a portion of the Carondelet commons of the town of Carondelet, together with the dedication, certificate of acknowledgment, and date of filing thereof, as fully as the same remains of record in my office, in Plat-book No. 2, page 44.

Witness my hand and official seal, the day of 1858.

Bill of Exceptions.

Defendant offers in evidence leases made by the inhabitants of Carondelet to Isaac B. Burbage 10th August, 1840; to Bryan Mullanphy 7th September, 1843; to Patrick L. McLaughlin and John

U S v Bleeing 1

alliance Ins Co et al v The Brig "Morning Light," &c et al 111

See v Dodge et al (Wis) 185

U S v White 270

The Slaver Kate 475

The Baigorry 474

U S v Suarez 693

U S v Pacheco et al 781

U S v Larkin 885

U S v Sutter 795

R. Dicks of the 18th January, 1845; and the city of Carondelet to N. Nicholas Demeuil 31 May, 1851, and to Alexander Kayser 18th October, 1851, deeds of quit-claim, to which and each of which the plaintiff objects that the same are incompetent and irrelevant; not authorized by any law; not binding upon the plaintiff as an estoppel; and that defendant has no privity with either of the said lessees or the grantee.

But the court admits the same and each of them to be read to the jury, to which the plaintiff then and there excepted.

The same were read as follows:

Lease of Carondelet to J. B. Burbage.

This indenture, made and executed at the town of Carondelet, in the county of St. Louis, in the State of Missouri, this tenth day of August, in the year of our Lord one thousand eight hundred and forty, by and between the board of trustees of the town of Carondelet aforesaid, parties of the first part, and Isaac B. Bourbage, party of the second part, witnesseth: That under and by virtue of the ordinances passed by the said board of trustees of the town of Carondelet, providing for the leasing of that portion of the commons of said town of Carondelet lying north of the river des Peres, the said parties of the first part, for and in consideration of the rents reserved and the covenants and agreements hereinafter set forth on the part of the said party of the second part, [illegible]reby grant, demise, and to farm let unto the said party of the [illegible]d part, his executors, administrators, and assigns, all that [illegible]in tract, piece, and parcel of land lying and being in that portion of the commons of said town of Carondelet above mentioned, lying north of the river des Peres, and containing two hundred and ninety-six feet west, three hundred and twenty feet south, three hundred east, and two hundred and seventy-eight north, being lot number twenty, (20) in survey No. one, (1) as laid down and designated on the plat of the subdivision of said portion of the commons of the town of Carondelet, made under the directions of said board of trustees by Zeno Mackay, and to be found on file among the records in the office of the recorder of the county aforesaid, to which said plat reference is made for a more full and minute description of the tract of land aforesaid: to have and to hold the said tract of land unto the said party of the second part, his executors, administrators, and assigns, for and during the full end and term of ninety-nine years, commencing from and after the twenty-ninth day of July, in the year of our Lord one thousand eight hundred and forty, and fully to be complete and ended, subject, however, to the conditions and stipulations hereinafter mentioned, he, the said party of the second part, his executors, administrators, and assigns, rendering to the said parties of the first part and to their successors in office the yearly rent of ten dollars and

sixty cents, payable at the end of each and every year during the continuance of the said term. And it is covenanted and agreed by and between the parties aforesaid that at the end of said term the lease shall be renewable at the option of the said party of the second part, his executors, administrators, and assigns, upon giving to the parties of the first part, of their successors in office in every instance, a notice in writing of the wish to renew the same three months at least before the end of the term. And every renewed lease shall contain all the covenants, agreements, and stipulations herein contained, with this exception only, that the annual rents to be renewed upon every renewal shall be double the amount of the above mentioned yearly rent. And it is further covenanted and agreed by and between the parties aforesaid, that if at any time the year's rent of any year or any part thereof remains unpaid six months after due, the said parties of the first part or their successors in office may terminate this lease by order or resolution to be entered on record among the acts and proceedings of the said board, declaring such lease void, whereupon said lease shall ipso *fact* cease, end, and determine; and the trustees may enter and take possession of the demise premises free from any claim of the delinquent lessee, his executors and administrators or assigns; and the said party of the second part, for himself and his executors, administrators, and assigns, does hereby covenant with the parties of the first part and their successors in office, that he or they will pay the rents reserved as aforesaid yearly and at the end of each and every year during the continuance of the said term, and also shall and will well and truly pay or cause to be paid all the taxes, rates, charges, and assessments whatsoever which now are and shall or may at any time hereinafter during the continuance of the said term hereby demised, be rented, taxed, charged, or assessed on the said demised premises or any part thereof.

And it is further covenanted and agreed by and between the parties aforesaid, their successors in office or legal representatives, that nothing herein contained shall be construed to imply a covenant or quiet enjoyment on the part of the said parties of the first part and their successors to and with the said parties of the second part and his legal representatives.

In testimony whereof, the parties aforesaid have executed this deed in duplicate, the chairman of said board signing his name, and the register of said *of said* corporation, under the corporate seal, attesting both parts, and the said party of the second part signing his name and affixing his seal to both parts of this indenture on the day, year, and at the place in this behalf first above written.

[SEAL.]

JOSEPH LEBLOND, *Chairman.*

ISAAC B. BURBBAGE. [SEAL.]

Attest:

P. L. McLAUGHLIN, *Register.*

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that on this twenty-second day of August, in the year of our Lord one thousand eight hundred and forty, before the undersigned, a justice of the peace within and for the county aforesaid, came Joseph Le Blond and Isaac B. Burbbage, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing, as having executed the same, and severally acknowledged the same to be their act and deed for the purposes therein mentioned.

PETER D. BARADA,
Justice.

Filed for record September 5, 1840, and recorded October 8th, 1840.

JNO. RULAND,
Recorder.

STATE OF MISSOURI,
County of St. Louis, ss.

I, the undersigned, recorder for said county, certify the foregoing to be a true copy of an instrument of writing from the trustees of Carondelet to Isaac B. Burbbage, together with the dates of filing and recording thereof, as fully as the same remains of record in my office in book 6^2, page 1.

[SEAL.] Witness my hand and official seal, this 17th day of February, 1858.

C. KEEMLE,
Recorder.
Pr. J. CONRAD, *D'y.*

Lease of Carondelet to B. Mullanphy.

This indenture, made and executed at the town of Carondelet, in the county of St. Louis, in the State of Missouri, this twenty-seventh day of September, in the year of our Lord one thousand eight hundred and forty-three, by and between the board of trustees of the town of Carondelet aforesaid, parties of the first part, and Bryan Mullanphy, party of the second part, witnesseth: that under and by virtue of the ordinances passed by the said board of trustees of the town of Carondelet, and providing for the leasing of that portion of the common of said town of Carondelet lying north of the Riviere des Peres, the said parties of the first part, for and in consideration of the rents reserved, and the covenants and agreements hereinafter set forth, on the part of the said party of the second part, do hereby grant, demise, and to farm let unto the said party of the second part, his executors, administrators, and assigns, all that certain tract, piece, and parcel of land lying and

being in that portion of the common of said town of Carondelet above mentioned, lying north of the Riviere des Peres, and being fractional blocks number twenty-eight and twenty-nine, 28 and 29, in survey No. one (1), as laid down and designated on the plat of the subdivision of said portion of the common of the town of Carondelet, made under the direction of said board of trustees by Zeno Mackay, and to be found on the file among the records in the office of the recorder of the county aforesaid, to which said plat reference is made for a more full and minute description of the tract of land aforesaid; to have and to hold the said tract of land unto the said party of the second part, his executors, administrators and assigns, for and during the full end and term of ninety-nine years, commencing from and after the twenty-first day of June, in the year of our Lord one thousand eight hundred and forty-three, and fully to be completed and ended, subject, however, to the conditions and stipulations hereinafter mentioned, he, the said party of the second part, his executors, administrators, and assigns, renting to the said parties of the first part, and to their successors in office, the yearly rent of ninety cents, $ .90, payable at the end of each and every year during the continuance of said term; and it is covenanted and agreed, by and between the parties aforesaid, that, at the end of said term, this lease shall be renewable at the option of the said party of the second part, his executors, administrators, or assigns, upon giving to the parties of the first part, or their successors in office, in every instance, a notice in writing of the wish to renew the same three months, at least, before the end of the term, and every renewed lease shall contain all the covenants, agreements, and stipulations herein contained, with this exception only, the annual rents to be reserved upon every renewal shall be double the amount of the above mentioned yearly rent; and it is further covenanted and agreed by and between the parties aforesaid, that if, at any time, the rent aforesaid, for six whole months, shall be in arrear and unpaid, the said parties of the first part, or their successors in office, may terminate this lease by order or resolution to be entered on record among the acts and proceedings of the said board, and may enter and take possession of the demised premises free from any claims of the delinquent lessee, his executors, administrators, or assigns, and the said party of the second part, for himself, his executors, administrators and assigns, do hereby covenant with the parties of the first part, and their successors in office, that *or* they will pay the rents reserved as aforesaid yearly, and at the end of each and every year during the continuance of the said term, and also shall and will well and truly pay, or cause to be paid, all the taxes, rates, charges, and assessments whatsoever, which now are, shall, or may at any time hereafter, during the continuance of the said term hereby demised, be rated, taxed, charged, or assessed on the said demised premises, or

any part thereof; and it is further covenanted and agreed by and between the parties aforesaid, their successors in office, or legal representatives, that nothing herein contained shall be construed to imply a covenant of quiet enjoyment on the part of the said parties of the first part, and their successors, to and with the said party of the second part, and his legal representatives.

In testimony whereof, the parties aforesaid have executed this deed in duplicate, the chairman of said board signing his name, and the register of said corporation, under the corporate seal, attesting both parts, and the said *part* of the second part signing his name and affixing his seal to both parts of this indenture on the day and year, and at the place, in this behalf first above written.

[SEAL.]

JOSEPH LEBLOND,
Chairman.

BRYAN MULLANPHY. [SEAL.]

Attest: JAMES C. EVANS,
Register.

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that on this twenty-ninth day of September, in the year of our Lord one thousand eight hundred and forty-three, before the undersigned, a justice of the peace, within and for the county aforesaid, came Joseph Leblond and Bryan Mullanphy, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as having executed the same, and severally acknowledged the same to be their act and deed for the purposes therein mentioned. Taken and certified the day and year aforesaid.

PETER D. BARADA,
Justice.

Filed for record 2d, and recorded October 12th, 1843.

HENRY J. WISE,
Recorder.

STATE OF MISSOURI,
County of St. Louis, ss.

I, the undersigned, recorder for said county, certify that the foregoing is a true copy of a deed from the board of trustees of the town of Carondelet to Bryan Mullanphy, of the certificate of acknowledgment, and also of the date of filing and recording, as the same remains of record in my office, book D, No. 3, p. 266.

Witness my hand and seal, this 17th day of February, 1858.

[SEAL.] C. KEEMLE, *Recorder*

Lease of Carondelet to McLaughlin and Jno. R. Dicks.

This indenture, made and executed at the town of Carondelet, in the county of St. Louis, in the State of Missouri, this eighteenth day of January, in the year of our Lord one thousand eight hundred and forty-five, by and between the board of trustees of the town of Carondelet aforesaid, parties of the first part, and Patrick L. McLaughlin and John R. Dicks, parties of the second part, witnesseth: That under and by virtue of the ordinances passed by the said board of trustees of the town of Carondelet, and providing for the leasing of that portion of the common of said town of Carondelet lying north of the river des Peres, the said parties of the first part, for and in consideration of the rents reserved, and the covenants and agreements hereinafter set forth on the part of the said parties of the second part, do hereby grant, demise, and to farm let unto the said parties of the second part, their executors, administrators, and assigns, all that certain tract, piece and parcel of land lying and being in that portion of the common of said town of Carondelet above mentioned, lying north of the river des Peres, and being fractional block number (C) in survey one (1) as laid down and designated on the plat of the subdivision of said portion of the common of the town of Carondelet made under the directions of said board of trustees by Zeno Mackay, and to be found on file among the records in the office of the recorder of the county aforesaid, to which said plat reference is made for a more full and minute description of the tract of land aforesaid:

To have and to hold the said tract of land unto the said parties of the second part, their executors, administrators and assigns, for and during the full end and term of ninety-nine years, commencing from and after the eight day of December, in the year of our Lord one thousand eight hundred and forty-three, and fully to be completed and ended, subject, however, to the conditions and stipulations hereinafter mentioned, they, the said parties of the second part, their executors, administrators, and assigns, rendering to the said parties of the first part, and to their successors in office, the yearly rent of eight dollars and two cents, payable at the end of each and every year during the continuance of the said term. And it is covenanted and agreed by and between the parties aforesaid, that at the end of said term this lease shall be renewable at the option of the parties of the second part, their executors, administrators or assigns, upon giving to the parties of the first part, or their successors in office, in every instance, a notice in writing of the wish to renew the same three months, at least, before the end of the term; and every renewed lease shall contain all the covenants, agreements and stipulations herein contained, with the exception only that the annual rents to be reserved upon every renewal shall be double the amount of the above mentioned yearly rent.

And it is further covenanted and agreed by and between the parties aforesaid, that if at any time the rent aforesaid for six months shall be in arrear and unpaid, the said parties of the first part or their successors in office may terminate this lease by order or resolution to be entered on record among the acts and proceedings of the said board, and may enter and take possession of the demised premises free from any claim of the delinquent lessee, their executors, administrators or assigns.

And the said parties of the second part, for themselves, their executors, administrators, and assigns, do hereby covenant with the parties of the first part, and their successors in office, that they will pay the rents reserved as aforesaid yearly, and at the end of each and every year, during the continuance of the said term, and also shall and will well and truly pay or cause to be paid all the taxes, rents, charges and assessments whatsoever which now are, shall or may, at any time hereafter during the continuance of the said term hereby demised, be rated, taxed, charged or assessed on the said demised premises or any part thereof. And it is further covenanted and agreed by and between the parties aforesaid, their successors in office or legal representatives, that nothing herein contained shall be construed to imply a covenant of quiet enjoyment on the part of the said parties of the first, and their successors, to and with the said parties of the second part, and their legal representatives.

In testimony whereof, the parties aforesaid have executed this deed in duplicate, the chairman of said board signing his name, and the register of said corporation, under the corporate seal, attesting both parts, and the said parties of the second part signing their names and affixing their seal to both parts of this indenture, on the day and year and of the place in this behalf first above written, the erasures made in said deed done before signing.

[SEAL.] JOSEPH LEBLOND, *Chairman.*

PATRICK L. McLAUGHLIN, [SEAL.]
JOHN K. DICKS. [SEAL.]

[L. S.] Attest:

GEO. F. EICHILBERGER, *Register.*

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that on this twentieth day of January, A. D. eighteen hundred and forty-five, before me, Frederick Kretschmar, a justice of the peace within and for the county of St. Louis aforesaid, came John K. Dicks, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing, as a party thereto, and he acknowledged the same to be his act and deed, for the purposes therein mentioned.

Taken and certified the day and year last aforesaid.

FRED. KRETSCHMAR,
Justice of the Peace.

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that on this eighteenth day of January, in the year of our Lord one thousand eight hundred and forty-five, before the undersigned, a justice of the peace within and for the county aforesaid, came Joseph Leblond, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing, as having executed the same as a party thereto, and acknowledged the same to be his act and deed, for the purposes therein mentioned.

Taken and certified the day and year aforesaid.

HAMILTON MICHEAU,
Justice.

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that on this first day of April, A. D. eighteen hundred and forty-five, before the undersigned, a justice of the peace within and for the county aforesaid, appeared Patrick McLaughlin, who is personally known to me to be the person whose name is subscribed to the foregoing instrument of writing, as a party thereto, and acknowledged the same to be his act and deed, for the purposes therein mentioned.

Taken and certified the day and year aforesaid.

ALPHONSE WETMORE,
Justice of the Peace.

Here follows, on the above and foregoing lease, "assignments of McLaughlin and Dicks to Peter A. and Patrick Walsh, together with their acknowledgments."

CLERK.

STATE OF MISSOURI,
County of St. Louis, ss.

I, the undersigned, recorder for said county, certify the foregoing to be a true copy of an instrument of writing from the trustees of Carondelet to Patrick McLaughlin and John R. Dicks, together with the three certificates of acknowledgments and the assignments of McLaughlin and Dicks to Peter A. and Patrick Walsh, together with their acknowledgments, as fully as the same remains of record in my office in book A 5, page 47.

Witness my hand and official seal this 18th day of February, [SEAL.] 1858.

C. KEEMLE, *Recorder.*
Per J. CONRAD, *Deputy.*

Lease of Carondelet to N. Nicholas Demeuil.

Know all men by these presents, that the city of Carondelet, pursuant to an ordinance of said city, approved on the thirtieth day of April, in the year eighteen hundred and fifty-one, and in consideration of the sum of one hundred dollars to them in hand paid by N. Nicholas Demeuil, who claims to be the actual lessee of all that certain tract, piece and parcel of ground, lying and being in that portion of the common of said city of Carondelet formerly the common of the town of Carondelet, lying north of the Riviere des Peres, and being lot number twenty (20) in survey number one, (1,) as laid down and designated on the plat of the subdivision of said portion of the common of said city of Carondelet, formerly the common of said town of Carondelet, made under the direction of the board of trustees of said town by Zeno Mackay, and to be found on file among the records in the recorder's office of St. Louis county, to which said plat reference is made for a more full and minute description of the tract of land aforesaid, have granted, remised, released, and forever quit-claimed, and do by these presents grant, remise, release, and forever quit-claim, to the said N. Nicholas Demeuil, the tract, piece and parcel of land aforesaid: to have and to hold the same to him the said N. Nicholas Demeuil, and to his heirs and assigns forever. This deed is intended to be and is a pure, unqualified, and unequivocal quit-claim deed.

In testimony whereof, under the provisions of said ordinance, the mayor of said city has hereto signed his name, and [SEAL.] the register of said city has attested the same, under the corporate seal of said city, this thirty-first day of May, in the year eighteen hundred and fifty-one.

JAMES B. WALSH, *Mayor.*

Attest: BERNARD POEPPING, *Register.*

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that on this thirty-first day of May, in the year eighteen hundred and fifty-one, appeared James B. Walsh, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing, as a party thereto, and acknowledged the same to be his act and deed, as mayor of the city of Carondelet, for the purposes therein mentioned.

Taken and certified the day and year aforesaid.

AUGUSTE GAMACHE,
Justice of the Peace.

Filed and recorded June 4th, 1851.

S. D. BARLOW, *Recorder.*

STATE OF MISSOURI,
County of St. Louis, ss.

The undersigned, recorder for said county, certify that the foregoing is a true copy of a deed from the city of Carondelet to N. Nicolas Demeuil, of the certificate of acknowledgment, and also of the date of filing and recording, as the same remains of record in my office in book Y, page 159.

[SEAL.] Witness my hand and official seal this 17th day of February, 1858.

C. KEEMLE, *Recorder.*

Lease of Carondelet to H. & Alex. Kayser.

Know all men by these presents, that the city of Carondelet, pursuant to an ordinance of said city, approved on the thirtieth day of April, in the year eighteen hundred and fifty-one, and in consideration of the sum of two hundred and sixty-seven dollars and thirty-three and one-third cents, to them in hand paid by Henry Kayser and Alexander Kayser, who claims to be the actual lessee for all that certain tract, piece, or parcel of land lying and being in that portion of the common of the town of Carondelet lying north of the river des Peres, and being fractional block number C, in survey one (1), as laid down as designated on the plat of the subdivision of said portion of the common of the town of Carondelet made under the direction of the board of trustees of said town by Zeno Mackay, and to be found on file among the records in the office of recorder of county of St. Louis, to which said plat reference is made for a more full and minute description of the tract of land aforesaid, have granted, remised, released, and forever quit-claimed, and do by these presents grant, remise, release, and forever quit-claim, to the said Henry Kayser and Alexander Kayser the fractional block number C, in survey one (1), aforesaid: to have and to hold the same to the said Henry Kayser and Alexander Kayser, and to his heirs and assigns forever. This deed is intended to be and is a pure, unqualified, and unequivocal quit-claim deed.

In testimony whereof, under the provisions of said ordinance, the mayor of said city has hereto signed his name, and the register of said city has attested the same under the corporate seal of said city, this eighteenth day of October, in the year eighteen hundred and fifty-one.

Attest: BERNARD POEPPING, [SEAL.]
Register.
JAMES B. WALSH, *Mayor.*

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that on this eighteenth day of October, in the

year eighteen hundred and fifty-one, appeared James B. Walsh, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as party thereto, and acknowledged the same to be his act and deed, as mayor of the city of Carondelet, for the purposes therein mentioned.

Given and certified the day and year aforesaid.

AUGUSTE GAMACHE,
Justice of the Peace.

Filed and recorded October 18, 1851.

S. D. BARLOW, *Recorder.*

STATE OF MISSOURI,
County of St. Louis, ss.

I, the undersigned, recorder for said county, certify that the foregoing is a true copy of a deed from the city of Carondelet to Henry Kayser and Alexander Kayser, of the certificate of acknowledgment, and also of the date of filing and recording, as the same remains of record in my office, book B, No. 6, page 152.

[SEAL.] Witness my hand and official seal this 18th day of February, 1858.

C. KEEMLE, *Recorder.*

Bill of Exceptions.

Defendant then offered the plat and description of the out-boundary of Carondelet of 14th of November, 1853, to which the plaintiff then and there objected, on the ground that the same was not made pursuant to any authorized or actual survey on the ground, and that the same was not authorized by any existing survey, and that the same was the retracing of a line of survey not approved at the time of the platting of the survey by the Commissioner of General Land Office, and that it was the retracing of a line of a survey then standing, disapproved by the Secretary of the Interior; but the court overruled said objections, and admitted said plat to be read in evidence to the jury, to which plaintiff then and there excepted.

The said plat and memorandum upon it were read and shown to the jury, as follows:

[*For plat see original, page* 54.]

Plat and description of the survey of the out-boundary of the village or town of Carondelet, in the Territory, now State, of Missouri, as executed under instructions of William Rector, the principal deputy surveyor of the United States for said Territory, prior to the year 1817, and retraced and connected with the adjoining surveys under the instructions of Elias T. Lanham, surveyor general of the United States for the district of Illinois and Missouri, in the month of March, 1834, including the out-lots, the common-field lots of the

common-field of said town, and the common thereto belonging, made in obedience to and in pursuance of the first section of the act of Congress approved on the 13th day of June, 1812, entitled "An act making further provision for settling the claims to land in the Territory of Missouri."

Description: Beginning at the upper and most eastern corner of the common of Carondelet, at the right bank of the Mississippi river, marked A on the plat; thence north, 56 W., 78 links to corner B; thence N., 82° W., with the most northern line of the survey of the said common, 41 chains 35 links to corner C; thence N. 14° 35′ E. with the eastern boundary of the common-field of Carondelet, 62 chains 48 links to corner D; thence north 56° 15′ W., with the northern boundary of said common-field, 116 chains 27 links to the most northern corner of the common-field marked E; thence with the western boundary of the common-field of Carondelet, S. 15° 30′ W., 88 chains 97 links to corner F; S. 26° 10′ W., 17 chs. 53 lks. to G; S. 35° 30′ W. 26 chs. 10 lks. to the most western corner of the common-field, and a corner of the common of Carondelet, on the S. E. boundary of Eugene Alvarez's tract, survey No. 1,339; thence continue the course S. 35° 30′ W., along Alvarez's line, 201 chs. 36 links, (in all on this course 227 chs. 46 lks.,) to corner H; thence N. 54° 20′ W., 1 ch. 83 links to corner I; thence continue along the westerly boundary of the common, S. 36° 30′ W., 271 chs. 81 links to the most western corner of said common marked K; thence with the southerly boundary of the common, S. 52° 30′ E., 149 chs. 90 lks. to corner L; S. 53° 30′ E., 148 chs. 24 lks. to corner M; S. 84° E., 2 chs. 43 lks. to lower corner of common of Carondelet, on bank of the Mississippi river, marked N; thence, with the meander of the right bank of the Mississippi river, up stream, to the beginning corner at A. Within the line above described there are contained, viz: Survey No. 3,102 of the common of Carondelet, including the village of Carondelet and the several individual tracts which are situated within it, with an area of 9,905 acres and 29 hundredths of an acre, and survey No. 3,103 of the common-field of said village, containing 1,500 $\frac{63}{100}$ acres, making an aggregate area of 11,405 acres $\frac{92}{100}$ of an acre, and being situate in township 43 and 44, of range 6 and 7, and township 45, R. 7, all north of the base line, and E. of the 5th pl. meridian, in the State of Missouri.

OFFICE OF SURVEYOR GENERAL FOR
DISTRICT OF ILLINOIS AND MISSOURI,
St. Louis, 14*th November*, 1853.

The above plat and description of the survey of the out-boundaries of the Carondelet lands, made out pursuant to the provisions

of the act of Congress referred to in the foregoing caption, have been examined, and are hereby approved.

(Signed) JNO. LOUGHBOROUGH,
Surveyor General.

OFFICE OF THE SURVEYOR GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, June 22d, 1855.

The above plat and description of the survey of the out-boundary lines of Carondelet, and the annexed note and certificate of approval thereto, are correctly copied from the original on file in this office.

JNO. LOUGHBOROUGH,
Surveyor General.

Bill of Exceptions.

Act of Missouri legislature, approved 6 Feb'y, 1839, read to the jury, authorizing leases of the Carondelet commons, as follows:

By consent of parties, this act may be read from the session acts of 1839, and need not be set forth here.

Defendant then read to the jury the ordinance No. 41, p. 54, of the city of Carondelet, of Oct. 4, 1851, to A. H. Menkens, *contract* as follows:

Ord. No. 41 *of City of Carondelet.*

No. 41.—An ordinance concerning the claim of the city to the portion of land lying north of the northern line of the city, and claimed to be a part of the Carondelet commons.

Be it ordained by the city council of the city of Carondelet as follows:

Sec. 1. That the city of Carondelet enters into the following contract with Anthony H. Menkens, to wit:

This agreement, made and entered into this first day of October, eighteen hundred and fifty-one, between "the city of Carondelet," of the first part, and Anthony H. Menkens, of the second part, witnesseth: That whereas the following portion of the common of Carondelet is in the adverse possession of divers persons, to wit: all that portion of said common which lies north of the present corporate limits of said city, and between the Mississippi river and the common-field of Carondelet, and bounded on the east by the Mississippi river; on the south by the northern boundary line of said city, as incorporated by the legislature of this State at its last session; on the west by the eastern boundary line of said common-field; and on the north by a line beginning on the west bank of said river at a point well known by the name of "Sugar Loaf," and running westward at right angles to said river, being all of the common owned by said city, or the inhabitants thereof, north of said northern boundary line of said city; and whereas the persons

who are in the adverse possession of the above described portion of said common deny the right of the good people of this city to the same, and it has become necessary to dispossess said persons holding adversely as aforesaid; and in so doing, it may be necessary to bring and maintain many expensive suits, to make new surveys, and incur great expense at St. Louis, and at Washington city, in getting orders for said surveys, and in getting the same received and approved by the proper officers, and to make many compromises, arrangements, and adjustments with said persons holding adversely as aforesaid; and whereas the said party of the second part is willing to run all risks, and bear all necessary expenses in obtaining said portion of said common, for one-half in fee simple of all that can be obtained by suit, compromise, or otherwise:

Therefore, in consideration of the premises, it is agreed between said party of the first part and said party of the second part, as follows, to wit:

First. The said party of the second part is to dispossess all persons holding adversely as aforesaid, if the same can be lawfully done.

Second. The said party of the second part is to bear all necessary expense in obtaining said portion of said common by suit, compromise or otherwise.

Third. The said party of the first part is to convey in fee simple to said party of the second part, at such time or times as he may appoint, one undivided half of such portion or portions of said common as he can obtain by suit, compromise, or otherwise; but no compromise is to be made without the approbation and consent of the city counsel of said city.

Fourth. The said party of the second part is to use all reasonable exertions to fulfil his part of this agreement; and,

Fifth. The said party of the second part, in carrying into execution this agreement, shall have the right and privilege of using the name of "The City of Carondelet," in all suits, actions, and proceedings in all courts and elsewhere.

Sec. 2. The mayor shall forthwith execute and acknowledge said contract in duplicate in behalf of the city, and cause the same to be attested by the register under the corporate seal.

This ordidance shall take effect, and be in force from and after its passage.

Approved Oct. 4, 1851.

Bill of Exceptions.—Contract between Carondelet and A. H. Menkens.

Defendant then read to the jury the contract with A. H. Menkens of Oct. 1st, 1851, acknowledged the 4th day of October, 1851, as follows:

This agreement, made and entered into the first day of October,

eighteen hundred and fifty-one, between the "city of Carondelet" of the first part, and Anthony H. Menkens of the second part, witnesseth: that whereas the following portion of the common of Carondelet is in the adverse possession of divers persons, to wit, all that portion of said common which lies north of the present corporate limits of said city, and between the Mississippi river and the common-field of Carondelet, and bounded on the east by the Mississippi river; on the south by the northern boundary line of said city, as incorporated by the legislature of the State at its last session; on the west by the eastern boundary line of said common-field, and on the north by a line beginning on the west bank of said river, at a point well known by the name of the "Sugar Loaf," and running westward at right angles to said river, being all of the common owned by said city, or the inhabitants thereof, north of said northern boundary line of said city; and whereas the persons who are in the adverse possession of the above described portion of said common deny the right of the good people of this city to the same, and it has become necessary to dispossess said persons holding adversely as aforesaid; and in so doing, it may be necessary to bring and maintain many expensive suits, to make new surveys, and incur great expense at St. Louis and at Washington city, in getting orders for said surveys, and in getting the same received and approved by the proper officers, and to make many compromises, arrangements, and adjustments with said persons, holding adversely as aforesaid; and whereas the said party of the second part is willing to run all risks, and bear all necessary expenses in obtaining said portion of said common for one-half in fee simple of all that can be obtained by suit, compromise, or otherwise:

Therefore, in consideration of the premises, it is agreed between said party of the first part, and said party of the second part, as follows, to wit: First. The said party of the second part is to dispossess all persons holding adversely as aforesaid, if the same can be lawfully done. Second. The said party of the second part is to bear all necessary expense in obtaining said portion of said common by suit, compromise, or otherwise. Third. The said party of the first part is to convey in fee simple to said party of the second part, at such time or times as he may appoint, one undivided half of such portion or portions of said common as he can obtain by suit, compromise, or otherwise; but no compromise is to be made without the approbation and consent of the city counsel of said city.

Fourth. The said party of the second part is to use all reasonable exertions to fulfil his part of this agreement; and fifth, the said party of the second part, in carrying into execution this agreement, shall have the right and privilege of using the name of "The City of Carondelet" in all suits, actions, and proceedings in all courts and elsewhere.

In testimony whereof, the parties aforesaid have executed this agreement in duplicates, the mayor of said city signing his name, and the register of said corporation, [SEAL.] under the corporate seal of said city, attesting both parts, and the said party of the second part signing his name, and affixing his seal to both parts of this instrument, on the day and year first aforesaid at said city.

JAMES B. WALSH, *Mayor.* [SEAL.]
ANTHONY H. MENKENS. [SEAL.]
Attest: BERNARD POEPPING *Register.*

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that on this fourth day of October, in the year of our Lord eighteen hundred and fifty-one, before me, the undersigned, a justice of the peace, within and for the county and State aforesaid, came James B. Walsh, mayor of the city of Carondelet, and Anthony H. Menkins, who are both personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they acknowledged the same to be their act and deed for the purposes therein mentioned.

Taken and certified the day and year aforesaid.

AUGUSTE GAMACHE,
Justice of the Peace.

Filed and recorded October 6th, 1851.
S. D. BARLOW, *Recorder.*

STATE OF MISSOURI,
County of St. Louis, ss.

The undersigned, recorder in and for said county, certify the foregoing is a full and complete copy of an instrument of writing, and of the certificate of acknowledgment, as also of the date of filing and recording, as fully as the same remains of record in my office in book C, No. 6, page 232, and foll'g.

Witness my hand and official seal this 18th day of [SEAL.] October, 1851.

S. D. BARLOW.

Bill of Exceptions.

The defendants offer the claim of St. Louis to commons of the village of St. Louis, with all the regulations of the syndics of St. Louis, and lieutenant governor of Upper Louisiana, and the proceedings of the old board of 10th of May, 1806, the evidence of witnesses before the old board, decisions of the old board 14th June, 1806, proceedings read, and the survey of Zeno Mackey of 1806; to the admission of which, and each of which, the plaintiff then

and there objected as being incompetent, irrelevant, not authorized by any act of Congress, not certified according to any law, and that the survey of Mackay and the evidence of witnesses before the old board is incompetent and irrelevant, and were hearsay, but the court admitted the same to be read to the jury as follows:

Claim of St. Louis to Common and Regul'tn of the Syndics, &c.—Claim.

The inhabitants of St. Louis claim 4,293 arpens of land, situate joining the town of St. Louis, known by the name of the common of St. Louis, granted by a decree of the lieutenant governor, Francis Cruzat, the 22d of September, 1782.

Decree.

Nous soussignes sindics nommes par l'assemblee des inhabitants qui a ete faite en la chambre du gouvernement le 22 du mois de September de cette annee 1782 par Monsieur Don Franco. Cruzat lieutenant colonel gradue d'infanterie, commandant en chef et lieutenant governor de la partie occidentale et districts des Illinois pour etablir des regles fixes et inalterables pour la construction et entretien des rues; ponts et canaux de ce village. Munis de l'autorite du public qui nous a elus a ces fins nous avons determine en la dette chambre du gouvernement et en presence du sus dit Mr. D. F. Cruzat; aujourd'hui, 29 du meme mois ce qui suit et a quoi ou se conformera regulierement a l'avenir.

1o. Il sera fait le premier jour de chaque anne en la chambre du gouvernement et en presence de Mons. le lieutenant gouverneur une assemblee des tour les habitants de ce poste, dans laquelle ou nommera a la pluralite des voix, deux sindics pour veller unanimement a l'entretien des rues, ponts & canaux de ce village lequels seront obliges de faire observer et remplir exactement les articles suivants.

2o. Le premier devoir des sindics aussit dit leur election dont etre d'examiner par eux, memes le local exterieur du village et de faire reparer dans, delai les rues, canaux et ponts, par les personnes qui y sont obligees et que nous indiguous plus bas, et si quelqu'un refusait de s'y conformer, ils auront a la justice pour les obliger a remplir un object si indispensable pour la commodite public.

3o. Tous les habitants qui font face a une rue, par laquelle passera un ruisseau, seront obliges a donner un cours a l'eau jusqu'au Mississippi, a faire les canaux et ponts nessaires a les entretenir et a mettre en tout temps la practicable des charrois & voitures publico.

4o. Hors les cas expliques les articles ci-dessus, les rues en general seront muomodies et entretenues en bor etat par les proprietaires des tarrains qui y feront face; bien entender que les viz-a-vis y co aperont par egal portion si le cas l'exige.

5o. Enfin le pont de la petite riviere ainsi que tous les chemins qui sont hors du village seront faits et entretenus par le public.

Fait et passe en la salle du gouvernement et en presence de Mons. le lieutenant gouverneur qui a signe avec nous le dit jour et au que ut supra.

PERRAULT,
BRAZEAU,
CERRE,
RENE RIERSERAUX.

Marque ordinaire
JOSEPH ⋈ TAYON.
du Senir.

Marque ordinaire
JOSEPH ⋈ MAINVILLE.
de Senir.

AUGUSTE CHOUTEAU,
CHAUVIN,
FRAN'CO CRUZAT.

Nous soussignes sindics nommes pas l'assemblee des habitants qui a ete faite en la chambre du gouvernement le 22 du mois de September de cette annee 1782, par Mons. Don Fran'co Cruzat, lieutenant colonel gradue d'infanterie, commandant en chef et lieutenant gouverneur de la partie occidentale et districts des Illinois, pour etablir des regles fixes et inalterables pour la construction et entretien des clotures de la commune de ce village, munis de l'autorite du public qui nous a elus a ces fins nous avons determine en la dite chambre du gouvernement et presence du sus dit Mr. D. Fran'co Cruzat aujourd'hui, 29 du meme mois qui suit et a quoi au se conformera regulierement a l'avenir.

1o. Le premier jour de chaque annee ou nomera publiquement dans la chambre du gouvernement en presence de Mons. le lieutenant gouverneur un sindic, et immediatement apres huit arbitres qui feront la premiere visite des clotures de la commune.

2o. Les clotures de la dite commune seront faites et parfaites tous les ans pour le 15 d'Avril au plus tard, esteront re mes le premier demande apres ce quantieme par les huit arbitres nommes.

3o. Les sus dits arbitres ne pourront recevoir les clotures sans quelles soient construites de maniere que les animaux ne puissent sortir de la commune, pour faire du digat dans les semences des habitants.

4o. Il sera du devoir des dits huit arbitres de vendre compte au sindic de la visite qu'ils auront faites des clotures, lequel tant aussitat en nomera huit autres pour verifier l'exactitude ou la negligence des premieres, et sil setrouvait de clotures qu'ne fussent pas dans l'etat requis pour etre recues et que les premiers arbitres n'en eussent pas fait leur rapport au dit sindic, ils seront candammes a payer chacun une amende de dix livres.

5o. Lorsqu'il parviendra a la connaissance du sindic que quelque cloture n'est pas dans l'etat d'ecrit dans le troisieme article de ce reglement, il sera de son devoir d'encevertir le proprietaire, pour que sans delai il y apporte le remede convenable, et si ce-dernier par caprice au autrement n'egligerait ce juste devoir, le sindic la fera raccommoder a ses depens.

6o. Si le dernier qui aura fait la visite des clotures si avertissait pas le sindic de l'etat dans lequel il les aura trouvees et que dans l'intervalle de sa visite a celle qui doit se faire apres, il se trouvat que les animaux fassent sortis, et qu'ils eussent fait quelque dommage, il sera contraint a le payer, et s'il arrivait que le sindic ayant ete prevenue du marvais etat des clotures, ont neglige d'en avertir les proprietaires, alors il sera responsible du degat et contraint a le payer lui-meme egalement dans le sas au les proprietaires des clotures auraient ete avertis par le sindic d'aller les racomoder et qu'ils ne l'eussent pas fait dans l'instant, ils subiront la meme peine.

7o. S'il arrivait dans le temps que les animaux seraient sortiret, qu'ils auraient fait du diegrat que plusieurs clotures seraient defectuenses, pour remedier aux suites facheuses qui resultent ordinairement de parails faits, il est statue que les dommages seront pages par egale portion par ceux dont les clotures seront mauvaises cepandant s'il survenait que dans l'espace d'une visite a l'autre, les clotures ayant ete trouvees en bon etat par le sindic au par les personnes preposees a cet effet, que les animaux eassent pas se par quelque breeche fait par des malfaiteurs inconnus ou par quelque autre evenement inattender, le dommage qui s'enmiora restera pour celui a qui il aura ete fait.

8o. Si les animaux qui seront mis en liberte venaient a etre pris dans les champs sans que les proprietaire eussent co-opere a leur sortie, ils ne seront tenus n'y a en payer, la prise ni le dommage suppose qu'il y en eut.

9o. Lorsqu'il sera prouve que le gardien de barriere y aura laisse paisse des animaux de quelque espece qu'ils puissent etre par sa negligence au autrement, il sera contraient a payer le tort qui aura ete fait.

10o. Aussitat que les clotures seront reques il ne sera permis a qui que ce puisse etre deprasser par dessus, sous peine de payer pour la premiere fais une amende de dix livres, et pour la seconde une d'vingt quatre et d'etre punis de vingt quatre heures de prison.

11o. Les malfaiteurs surpris a faire breche dans le clotures soit pour passer eux-memes au pour faire passer des animaux, n'importe quelque soit le motif seront condamnes a payer en autre du dommage qu'ils auront causes 50 livres d'amende et subiront 50 jours de prison.

12o. Il est ordaure a tous ceux qui trouveront quelqu'un a com-

mettre le delit especific dans l'article precedent, d'en donner le plus prompt avis a Mons. le lieutenant gouverneur et de condaive lui meme le criminel en prison s'il lui est possible de l'arriter. Mais si quelque personne par nine indulgence mal entendure au par un interet particulier, ne remplissait pas exactement ce devoir et qu'il fut prouve, qu'il aurrait dit a d'autres personnes d'avoir surpris quelqu'un dans ce cas, il sera repute complice du crime et condamne a payer la meme amende et dommage et a subir la punition ci-dessus portee.

13o. Les proprietaires de chaque cloture seront obliges d'y mettre une étampe avec leur nom en entier sous peine de quinze livres d'amende.

14o. Celui qui prendra un cheval attaché dans la prairie pour seu servir sans l'aveu du maitre sera convamne à payer 25 livres d' amende, et puni de 24 heures de prison, et s'il survenait quelque accident facheux au cheval, il le payera suivant l'appreciation qui ou sera fait.

15o. Si des chevaux au animaux attachés dans la prairie, cossant leur corde venaient a étre pris dans les champs, celui qui les arretera fera payer pour chaque tete cinq livres ette proprietaire de la terre sur laquelle ils seront pris exigera le payment du dommage qui sera estime par des arbitres.

16o. Lorsqu'il sera prouvé que quelqu'un aura pris la corde d'un animal attaché dans la prairie il la payera dix livres sas prejudice de 5 livres pour la prise et des dommages qu'il aura occasionés suivant l'estimation arbitral qui en sera faite.

17o. Il ne sera permis a qui que ce puisse étre d'attacher des chevaux au autres animaux sur la terre d'autrui sans son propre consentement s'il en etait autrement le maitre de la terre se saisira des animaux et exigera de celui a'qui ils appartiendront 5 livres par tete, et sera en droit de reclamer le dommage, suppose qu'ils en aient fait.

18o. Quand ou trouvera des esclaves a enfreindre quelqu 'un des articles ci-dessus, leurs maitres payeront les amendes, prises et dommages prescrito, et les sus dits esclaves seront prinis par le fouit selon l'exigence des cas.

19o. Toutes les amendes seront deposées entre les mains en sindic determine par Mons. le lieutenant gouverneur des deux qui seront nommees annuellement pour la police et entretien du village et elles seront reversibles aux travaux publics de la communante.

Fait et passee en la salle du gouvernement en presence du sus dit

lieutenant gouverneur, qui a signé avec nous le meme jour et au que ut supra.

PERRAULT,
CERRE,
BRAZEAU,
RENÉ RIERCERAUX,

Marque
DE Mr. TH. ⋈ TAILLON.
ordinaire.

Marque ordinaire
JOSEPH ⋈ MAINVILLE.
de mons.

CHAUVIN,
AUGUSTE CHOUTEAU,
FRAN'CO CRUZAT.

See book B, p. 486, 487, and 488.

Translation.

We, the undersigned, syndics named by the meeting of the inhabitants holden in the government chamber, the 22d of the month of September, of this year 1782, by Mr. Don Francis Cruzat, Lieutenant Colonel *grad* of infanty, commander in chief, and lieutenant governor of the western part and districts of the Illinois, to establish fixed and unalterable rules for the construction and maintenance of the streets, bridges and canals of this village, clothed with the authority of the public, which have selected us for these ends, have determined in the said government chamber, and in the presence of the aforesaid Mr. D. F. Cruzat, this day, the 29th of the same month, the following, which is to be regularly conformed to in future:

1. There shall be held, the first day of every year, in the government chamber, and in the presence of Monsieur the lieutenant governor, a meeting of all the inhabitants of this post, wherein, by plurality of voices, there shall be named two syndics, who shall together (unanimously) superintend the maintenance of the streets, bridges, and canals of the village, and who shall be obliged to cause to be observed and fulfilled strictly the following articles:

2o. The first duty of the syndics immediately after their election shall be, to examine for themselves the interior locality of the village, and to cause without delay the streets, canals, and bridges to be repaired by the persons who are bound so to do, and whom we indicate below; and that if any one refuses to conform thereto, they have recourse to law to compel them to fulfil an object so indispensable for the public convenience.

3o. All the inhabitants fronting upon a street along which a run (streamlet) shall pass, shall be obliged to give course to the water to the Mississippi, to make the canals and bridges necessary to

maintain them, and keep the streets at all times practicable for the convenience of carriages and public cars.

4o. Besides the specifications in the aforegoing articles, the streets in general shall be repaired and maintained in good condition by the proprietors of the ground fronting on them, it being understood that those opposite to each other shall co-operate in equal portions, if the case require it.

5o. Finally, the little river bridge, as well as all the roads which are outside of the village, shall be made (and) maintained by the public.

Done and passed in the government hall, and in the presence of Monsieur the lieutenant governor, who has signed with us the said day and year ut supra.

PERRAULT,
BRAZEAU,
CERRE,
RENE KIERCERAUX,
AUGUSTE CHOUTEAU,
CHAUVIN.

Ordinary mark of JOSEPH ⋈ TAILLON,
" " JOSEPH ⋈ MOINVILLE,
(Signed) FRANCIS CRUZAT.

We, the undersigned, syndics named by the meeting of the inhabitants which was holden in the government chamber, the 22d of the month of September, of this year 1782, by Monsieur Don Francis Cruzat, Lieutenant Colonel *grad* of infanty, commander-in-chief, and lieutenant governor of the western part and districts of the Illinois, to establish fixed and unalterable rules for the construction and maintenance of the enclosures of the commons of this village, clothed with the authority which elected us for these ends, have determined in the said government chamber, and in the presence of the aforesaid Mr. Don Francis Cruzat, this day, the 29th of the same month, the following, whereunto conformity for the future shall be regularly observed:

1. The first day of every year there shall be named publicly in the government chamber, in the presence of Monsieur the lieutenant governor, a syndic, and immediately after eight arbiters, who shall make the first examination of the enclosures of the common.

2. The enclosures of the said commons shall be made and completed every year by the 15th of April, at the latest, and shall be accepted by the eight arbiters the first Sunday after the fourth.

3. The aforesaid arbiters shall not accept the enclosures, unless they be constructed in such manner that the animals cannot escape from the common, and do damage to the seedings of the inhabitants.

4. It shall be the duty of the said arbiters to render an account of the examination of the enclosures which they shall have made to the syndic, who thereupon shall immediately nominate eight others to verify the exactness or negligence of the first. And if there shall be found enclosures which are not in the condition required to be accepted, and the first arbiters shall not have made their report thereof to the syndic, they shall be condemned to pay each a fine of ten pounds.

5. Whensoever it shall come to the knowledge of the syndic that any enclosure is not in the state decreed by the third article of this ordinance, it shall be his duty to give notice thereof to the proprietor, in order that, without delay, he may apply to it the proper remedy; and if the latter shall, through caprice or otherwise, neglect this first duty, the syndic shall cause it to be repaired at his cost.

6. If the last who shall have made the visit of examination to the enclosure shall not have given notice to the syndic of the condition in which he should have found them, and if, in the interval between his visit and that which is subsequently to be made, it shall be proved that the animals have escaped, and that they have done any damage, he shall be forced to pay for it; and if it happen that the syndic, having been warned of the bad condition of the enclosures, shall have neglected to give notice thereof to the proprietors, then he shall be responsible for the damage, and be constrained to pay it himself.

In like manner, in the case of the proprietors of the enclosures having been notified by the syndic to go and repair them, and their failure to do so immediately, they shall undergo the same penalty.

7. If it happen that at any time when the animals shall have escaped, and shall have done damage, that several enclosures are defective, in order to remedy the vexatious consequences which usually result from similar facts, it is ordered that the damage be paid in equal portions by those whose enclosures are defective.

Nevertheless, if it should occur that, in the interval between one visit and another, the enclosures having been found in good condition by the syndic, or other persons appointed for that purpose, the animals shall have escaped through any breach made by unknown malefactors, or from any other unexpected event, the damage following thereupon shall rest upon him when it has fallen.

8. If the animals which shall be turned loose come to be taken up in the fields without the owners having co-operated in their egress, they shall not be held to pay either the caption or the supposed damage which they may have occasioned.

9. Whensoever it shall be proven that the gate-keeper shall have allowed animals of any sort whatsoever to escape, by his negligence

or otherwise, he shall be forced to pay the damage which may be done.

10. As soon as the enclosures shall have been accepted, it shall not be permitted to any person whatsoever to pass over them upon pain of paying for the first offence ten pounds, and for the second twenty-four, and suffer an imprisonment of twenty-four hours.

11. Malefactors suprised in making a breach in the enclosures, whether to pass themselves, or to allow the animals to pass, whatsoever be the motive, shall be condemned to pay, besides the damages they may have caused, a fine of fifty pounds, and to undergo an imprisonment of fifteen days.

12. It is ordered that all those who may find any one committing the crime specified in the preceding article shall give the promptest advice thereof to Monsieur the lieutenant governor, and shall themselves conduct the criminal to prison, if it be possible for them to arrest him; but if any one, through a mistaken indulgence, or any private interest, shall not strictly fulfil his duty, and if it shall be proven that he has stated to other persons that he has surprised any one, in such case he shall be reputed an accomplice in the crime, and condemned to pay the same fine and damages, and undergo the same privation, as hereinbefore provided.

13. The proprietors of each enclosure shall be obliged to place thereupon a stamp, with their name in full, under penalty of fifteen pounds fine.

14. He who takes a horse in the prairie, to make use of him, without the consent of the master, shall be condemned to pay twenty-five pounds fine, and punished with twenty-four hours' imprisonment, and if any unlucky accident shall befall the horse he shall pay therefor according to the estimate which shall be made thereof.

15. If horses or animals tied in the prairies break their ropes, and come to be taken up in the fields, he who takes them up shall receive five pounds per head; and the proprietor of the land whereon they are so taken shall demand the damages which shall be assessed to him by the arbiters.

16. Whensoever it shall be proven that any one has taken the rope off an animal fastened in the prairie, he shall pay ten pounds therefor, without prejudice to the five pounds for the taking, and the damages which he shall have occasioned according to the estimate of the arbiters, which shall be made thereof.

17. It shall not be permitted to any person, whatever, to tie horses or other animals upon the lands of others, without their consent, otherwise the owner of the land shall seize the animals, and exact of him to whom they belong five pounds per head, and shall have the right to claim the supposed damages which they may have done.

18. Whensoever any slaves shall be found to have violated any

of the foregoing articles, their masters shall pay the fines, costs of taking up and damages prescribed; and the aforesaid slaves shall be punished with the lash, according to the exigency of the case.

19. All the fines shall be deposited in the hands of the syndic designated by the lieutenant governor, of the two who shall be annually named for the police and maintenance of the village, and they shall be convertible to the public works of the community.

Done and passed in the government hall, in the presence of the aforesaid lieutenant governor, who has signed with us the same day and year, ut supra.

(Signed) PERRAULT,
CERRE,
RENE KIERCERAUX,
BRAZEAUX.

Ordinary mark of JH. ✕ TAILLON,
JH. ✕ MOINVILLE,
CHAUVIN,
AUGUSTE CHOUTEAU,
FRANC. CRUZAT.

Proceed's of the Old Board, &c.

May 10th, 1806.

The board met agreeably to adjournment; Hon. Clement B. Penrose, esq.

The inhabitants of the town of St. Louis, claiming 4,293 arpens of land commons, produce a certificate of survey of the same, dated 22d February, 1806; a set of regulations of the inhabitants having for object the keeping in order or repairing of the enclosure of said commons, and imposing penalties on such as should neglect or refuse to repair the same. Said regulations signed by the Lieutenant Governor Cruzat, and dated 22d September, 1782.

Auguste Chouteau, being duly sworn, says that the inhabitants never had a concession for said commons; that he has always known it was such, although of much smaller extent at first; that it was first fenced in the year 1764, at the expense of the inhabitants, who always kept it in repair; and further, that every person, inhabitant of the village, was in the habit of pasturing his cattle in the same, and of cutting wood; and further, that he has known the said commons as surveyed, fenced, for upwards of fifteen years hence.

Gregoire Sarpy, being duly sworn, says that he arrived in the country about 19 or 20 years ago; that he has always known said commons as such; that the same had then acquired its present size; that when he arrived he found the *fenced in*, [fence down?]

and that every inhabitant was obliged, under certain penalties, to attend to and make such repairs as the said enclosure of fences required; and further, that Sylvester Labadie, having in the year 1792 obtained a concession for lands forming part of said commons, and having in consequence thereof begun his improvement of the same, the inhabitants remonstrated against it to the lt. governor, who prevented him from cultivating the same, until such time as the intendant should have decreed otherwise.

William H. Lecompte, being also sworn, says that he has been an inhabitant of the country for upwards of 44 years; he has known the commons from his first arrival in it; that the said commons has increased in proportion to the population of the village; that he has known it of the size it now is for upwards of ten years; that the old commons is included in the present one, and that the regulations passed upon the same were always considered as laws, and enforced as such; and further, that other regulations were had respecting the same, and also put in force.

The board reject this claim for want of actual inhabitation and cultivation, and a duly registered warrant of survey, (carried to page 311, for remarks of the board.)

Adjourned till 3 o'clock p. m.

See minutes of the old board, No. 1, pages 288, 289, 290 and 291.

June 14th, 1806.

The board met agreeably to adjournment.

Present, the Honorable John B. C. Lucas, B. Penrose, and James L. Donaldson, esqs.

In the case of the commons of St. Louis, pages 289 and 290.

The board remarked that this claim originated under the French government; that grants of commons were usual under the French and Spanish governments, and in conformity with their respective laws.

They deem it to be equitable under Spanish laws.

On motion, adjourned to Monday, the 16 inst., 9 o'clock a. m.

See book No. 1, of minutes of old board, pages 310, 311 and 312.

Thursday, January 2d, 1812.

Board met: Present, John B. C. Lucas, Clement B. Penrose, Frederick Bates, commissioners.

Inhabitants of the town of St. Louis, claiming 4,293 arpens of land as a common. See book No. 1, pages 289 and 311.

It is the opinion of a majority of the board that this claim ought not to be granted.

Clement B. Penrose, commissioner, voting for a confirmation

thereof, under the usages and customs of the Spanish government.

Board adjourned till Monday next, 9 o'clock a. m.

JOHN B. C. LUCAS,
FREDERICK BATES,
CLEMENT B. PENROSE.

See book No. 5, of minutes of old board, pages 551, 552 & 553.

Survey of James Mackay, 1806.

Commons of St. Louis, containing in all 4,293 arpens, including six claims besides Madam Dubreuille's, which is not surveyed.

August Chouteau, 60 arpens.

[*For plat see original, page* 68.]

I do certify, that the above plat represents four thousand two hundred and ninety-three arpens of land, situated in the town of St. Louis, and surveyed by me at the request of the inhabitants of said St. Louis, who claim the same as their right in common, and at whose request I have included in the said commons seven different pretensions of different individuals, as appear on the above plat, besides those which are unknown to me, and not surveyed.

Given under my hand at St. Louis, the 22d day of February, 1806.

JAMES MACKAY.

Received for record, St. Louis, 27th February, 1806.

ANTOINE SOULARD,
Sur. Gen'l Ter'y Louisiana.

See original plat on file, and its record, at page 488 of book B.

Bill of Exceptions.

To the admission of all the foregoing proceedings and the documentary evidence and survey, the plaintiff then and there excepted and objected.

Survey of Jos. C. Brown, of 13th May, 1833, No. 3,125, of St. Louis Com's.

The defendant then offered the survey of Jos. C. Brown, of 13th May, 1833, No. 3,125, of St. Louis commons, to which the plaintiff then and there objected, that the survey was not made pursuant to any instructions of the Commissioner of the General Land Office, nor in pursuance of any act of Congress, or instructions from any department of the government of the United States, authorized to give instructions in that behalf; but the court admitted the said survey in evidence, to which the plaintiff then and there excepted.

thereof, under the usages and customs of the Spanish government.

Board adjourned till Monday next, 9 o'clock a. m.

JOHN B. C. LUCAS,
FREDERICK BATES,
CLEMENT B. PENROSE.

See book No. 5, of minutes of old board, pages 551, 552 & 553.

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The same was read to the jury as follows:

Plat and survey of the land claimed by the inhabitants of the city of St. Louis, as commons, surveyed under contract with and instructions from the surveyor of public lands in the States of Illinois and Missouri, dated surveyor's office, St. Louis, November, 1832.

[*For plat see original, page* 70.]

Begin at a stone, which is a corner of this survey, and also a corner of Auguste Chouteau's survey No. 363, set of old by Spanish authority; thence along said Chouteau's line, which is the northern boundary of this survey, N. 75° 10′ W.; at the distance of 17 chains 70 links from the beginning is a stone 10 links on the left; at 32 chains 67 links a stone in the line; at 43 chains 70 links intersect a branch 6 links wide; at 44 chains 92 links left said branch bearing northwardly, having out a short bend of it; at 46 chains 70 links intersect Chouteau's mill-pond, bearing northeastward; at 50 chains 50 links, left said pond; at 62 chains 78 links is a stone; at 92 chains 42 links a stone; at 101 chains 36 links intersect the creek of the pond, 20 links wide, and bears southeastward; at 106 chains 81 links intersect a spring branch 4 links wide, bearing northward; at 107 chains 11 links a stone; at 151 chains 37 links a stone; at 166 chains 22 links a stone; at 175 chains set a post in said line for a corner of this survey, which is 5 chains 90 links eastward of the southwest corner of Chouteau's said survey, from which a cherry 4 inches diameter bears N. 76° W., 350 links distant (and is 25 links southward of a large spring,) and a pin-oak 4 inches in diameter bears N. 66° 30′ W., 324 links distant; thence along the western boundary of this survey S. 0° 42′ E.; at 28 chains 57 links intersect a line of James Y. O. Carrel's survey, No. 2,498, where set a post, 95 chains 18 links eastward of his corner stone in Gratiot's line; from said post a red oak 3 inches in diameter bears N. 52° E., 94 links distant, and a red oak 4 inches in diameter bears N. 63¾° W., 90 links distant.

Thence measured along the said western boundary of this survey to a corner of Charles Sanguinette's survey No. 2,043, which is also a corner of this survey, the whole length of this line being 162 chains 71 links; said corner is a post, from which a red oak 15 inches in diameter bears S. 59° E., 97 links distant; and the northwest corner of the chimney to a dwelling-house bears S. 46½° E., 156 links distant; thence along one of said Sanguinette's line, which is a line of this survey, S. 82° 45′ E., 9 chains and 5 links, where set a post as corner to this survey and Sanguinette's survey, the old corner not being found, from which a pin-oak 10 inches in diameter bears N. 11° 30′ E., 201 links distant; thence along an

old line of Sanguinette's survey and of this survey S. 7° 15 W., (crossing a spring-branch, running eastward about midway this line,) 9 chains to the old corner of this survey, a post and stone, from which a pin-oak 8 inches in diameter bears N. 13° W., 136 links distant, and a pin-oak 10 inches in diameter bears S. 88° W., 13 links distant; thence N. 82° 45′ W., along an old line of said Sanguinette's survey, which is a line of this survey, 9 chains and 5 links, set a corner post, from which a pin-oak 12 inches in diameter bears S. 67° E., 67 links distant, and a sassafras 6 inches in diameter bears S. 12° E., 65 links distant; thence along another of said Sanguinette's lines, being also a line of this survey, S. 7° 15′ W., 23 chains 14 links to an old stone, corner of said Sanguinette's and of this survey; thence along the east end of other field-lots S. 7° W., 37 chains 70 links, a stone set of old, as the southeast corner of a survey of Charles Sanguinette's claim under J. B. Tesson, being a corner of this survey; thence along a new line, as called for in this survey, 33 chains 25 links, set post for a corner, from which a black oak 5 inches in diameter bears N. 12° W., 15 links distant, and a hickory 4 inches in diameter bears N. 68° W., 2 links distant; thence S. 8° W., along another new line, as called for in this survey, 55 chains 35 links, set a post for [illegible], from which a red oak 6 inches in diameter bears N. 30½ E., [illegible]nks distant, and a red oak 9 inches in diameter bears N. [illegible]E., 232 links distant; thence east along a new line, which is the south boundary of this survey, 49 chains 27 links, set a post on the bank of the river, the southeast corner of this survey, from which an elm 10 inches in diameter bears N. 31° E., 15 links distant, and a sycamore 6 inches in diameter bears S. 18¾° E., 55 links distant; from this line, measured at right-angles northward the southeast corner of a stone house, near the shot-tower on the river bluff, is distant 6 chains 13 links, and the centre of the shot-tower is distant 5 chains 22 links; from said S. E. corner meander up the river between high and low-water mark N. 30° 20′ E. 36 chains; thence N. 49° E. 12 chains 50 links; thence N. 35° E., 18 chains, set a post on the bank of the river, a corner of this survey, from which a plum tree 3 inches in diameter bears N. 20° E., 75 links distant, and a walnut 3 inches in diameter bears N. 17° W., 45 links distant; thence along a new line N. 30° 45′ E., to a point called for in a line of August Chouteau's said survey, as a corner of this survey; at 42 chains 67 links, his line, which is the eastern boundary of this survey, intersects the township line, where set a good hammered stone for corner to fractional section 3 and 34, in township 44 and 45 north, and range 7 east; 17 chains 52 links west of the corner to said fractional section, set in the southern line of Susan Dubreuil's survey No. 374; at 56 chains 94 links intersect the south boundary line of Susan Dubreuil's said survey, where set a post, 19 chains 30 links westward of her corner on the bank of the

river, from which post a white oak 3 inches in diameter bears S. 75° W., 34 links, and a white oak 3 inches in diameter bears N. 5° E., 14 links distant; at 69 chains 17 links intersect the western boundary of said Susan's survey, where set a post, 46 links southward of her N. W. corner stone, from which a white oak 4 inches in diameter bears S. 10° W., 80 links distant; at 164 ch's 40 links intersect the southern boundary line of Madam Chouteau's survey No. 1,827, where set a post, 12 chains 21 links westward of her S. E. corner, from which a mulberry 3 inches in diameter bears S. 13° 45′ W., 44½ links distant, and a plum 3 inches in diameter bears S. 21 W., 44 links distant; at 176 chains 12 links intersect the northern line of said survey, and set a post there, 11 chains 41 links westward of her N. E. corner, from which a pecan 3 inches in diameter bears S. 54° E., 33 links distant, and a locust 4 inches in diameter bears N. 44° E., 107 links distant; at 177 chains 20 links intersect the south line of A. Soulard's survey No. , where set a post, 10 chains and 63 links wesward of his S. E. corner, from which post a locust 4 inches diameter bears S. 53° E., 26 links distant, and a locust 5 inches in diameter bears N. 18° W., 108 links distant; at 218 chains 45 links intersect the line between James Mackay's and A. Soulard's surveys, and set post there, 14 chains and 40 links westward of his N. E. corner of said survey, and 15 chains 70 links westward of the N. W. corner of his survey in the name of Gabriel Cerre, from which post a black oak 4 inches in diameter bears N. 7° 31′ E., 28 links distant, and a black oak 3 inches in diameter bears S. 72° W., 6½ links distant; at 233 chains 34 links (which is the whole length of this line) intersect August Chouteau's line, and there set post for a corner of this survey, 8 chains 65 links westward of his corner, near the convent, from which post a pin-oak 4 inches in diameter bears N. 5° W., 11 links distant, and a pin-oak 4 inches in diameter bears S. 36° 30′ W., 34 links distant; thence along Chouteau's said line, being a line of this survey, N. 75° W., 32 chains 9 links, to an old stone, corner to said Chouteau's survey, which is a corner of this survey; thence N. 14° E., 12 chains 3 links, along a line of Chouteau's said survey, being a line of this survey, to the beginning; which said survey of the commons, claimed as aforesaid, contains 3,837.03 acres, equal to 4,510.43 arpens.

May 13th, 1833.

JOS. C. BROWN, *D. S.*

OFFICE OF THE SURVEYOR GENERAL,
St. Louis, June 4th, 1850.

I certify that the foregoing plat and description of survey No. 3,125 are correctly copied from pages 74, 75, and 76, of book C, in this office.

M. LEWIS CLARK,
Surveyor General.

N° 259 - page 74.

Survey N° 3126 -
Commons of St. Louis
Survey N° 3103
Common Field Lands
of Carondelet
Survey N° 3102.
Commons of Carondelet
Village of Carondelet
Mississippi River
Stone House
Mound called the Sugar Loaf
Scale:- 40 chains to an inch

OFFICE OF THE SURVEYOR GENERAL FOR ILLINOIS AND MISSOURI, *St. Louis, Dec. 16th,* 1857.

I certify that the foregoing plat and description of approved survey No. 3,125 are correctly copied from pages 74, 75, and 76, of record-book C, on file in this office.

JOHN LOUGHBOROUGH,
Surveyor General.

Bill of Exceptions.

The defendant then offered the plat of survey of fractional section 9, of township 44 N., of R. 6 east of the 5th principal meridian; to which the plaintiff then and there objected, that the same was not made as an actual survey, but was constructed without any authority of law, and within the out-boundary of the commons of Carondelet; but the court admitted the same as evidence to the jury; to which the plaintiff then and there excepted, and the said plat was read to the jury as follows:

Survey of fract'l sect. 9, township No. 44 north, of the base line, range No. 7 east, of the 5th p'l meridian.

[*For plat see original, page* 74.]

Field-notes of the Survey of the most southern boundary of the commons of St. Louis.

The southeast corner of the commons of St. Louis is a post on the bank of the river, from which an elm 10 inches in diameter bears N. 31° E., 15 links distant, and a sycamore 6 inches in diameter bears S. 18¾° E., 55 links distant; from this post the temporary post set at the end of the random line, 48 links north of the shot-tower, as described on page 10, (of the original field-book,) bears N. 17° W.; thence west along a new line, run as the south boundary of this survey, (which line is 6 chains 13 links south of the S. E. corner of a stone dwelling-house, near the shot-tower on the bluff, and is 5 chains 22 links south the centre of said shot-tower, and is 22 links south of a line run as the south boundary, but which was discovered to be not in its right place,) 49.27, (chains,) set a post, for S. W. corner of this survey, from which the temporary post, described on page 9, (of the original field-book,) bears 8° E., 5 ch's 76 links distant, making the whole length of that line to be S. 8° W., 55 chains 35 links; from said corner post a red oak 6 inches in diameter bears N. 30½° E., ks distant, and a red oak 9 inches in diameter bears N. 232 links distant.

8th, 1833.

JOSEPH C. BROWN, *D. S.*

(See volume 36, p's 164, 165, and 166, of field-notes of private surveys in Missouri.)

Field-notes of the Survey of the most northern boundary of the commons of Carondelet.

The N. W. corner of the common of Carondelet, is a stone set in the east boundary line of the (Carondelet) common-fields, 70 links northward of a stone, the S. E. corner of a tract of $1\frac{1}{2}$ arpent front, said formerly to have belonged to J. B. Gamache, and now to Thom's Chrautrand.

The stone here set by me is 18 inches long, 4 inches thick and 12 inches broad, set 9 inches deep, edge east, the N. W. corner of the common of Carondelet.

For connection of the common of Carondelet with the common of St. Louis, measured from the N. W. corner stone of the common of Carondelet, N. 14° 40′ E. along the front line of the common-fields, 3.65 chains, a stone corner appears to have been reset, being in a path, 5 chains 72 links, intersect the south boundary line of the common of St. Louis, 4 chains 34 links, east of the S. W. corner of St. Louis common, according to a late survey thereof by me.

From the N. W. corner of the common of Carondelet, S. 82° E. along a new line, the north boundary of common of Carondelet, 35.00 chains; the middle of the road leading from Carondelet to St. Louis, 40.00, just east the precipice of stone on river Mississippi; 41.35, set post just at ordinary high water, for N. E. corner of the common of Carondelet, from which a sycamore 10 inches in diameter bears S. 12° E. 24 links, and an elm 11 inches in diameter bears N. 46° E. 38 links distant; thence for connection with the S. E. corner of the common of St. Louis, S. 50° E. 78 links; thence N. 25° 15′ E. 11 chains 90 links, to the S. E. corner of St. Louis common.

March, 1834.

JOS. C. BROWN.

(See volume 29, pages 134, 135, 136 and 137, of the field-notes of private surveys in Missouri.)

OFFICE OF THE SURVEYOR GENERAL FOR
ILLINOIS AND MISSOURI,
St. Louis, January 9th, 1854.

I certify that the foregoing plat of fractional section 9, township 44 north, range 7 east, of the 5th principal meridian, and its connections with the adjoining surveys, is correctly copied from the plat of said township on file in this office; also that the foregoing field-notes of the survey of the most southern boundary line of the common of St. Louis, and of the survey of the most northern line of the common of Carondelet, according to which it appears said frac-

tional section 9 has been constructed and laid down on said township plat, are correctly abstracted from the books and pages above referred to, on file in this office.

JOHN LOUGHBOROUGH,
Surveyor General.

Bill of Exceptions.—Ord. No. 307 *of the City of St. Louis.*

Ordinance No. 307, (p. 218, Rev. Ordinances of 1856,) of the city of St. Louis, 26th January, 1856, offered by the defendants, and objected to by plaintiff, but admitted by the court only to show the claim of St. Louis to the land. The same was read as follows:

(No. 307.)

An Ordinance for the sale of the St. Louis Commons.

Be it ordained by the mayor and board of aldermen of the city of St. Louis:

Section 1. That the commons of St. Louis be sold to the highest bidder, according to the act of the general assembly in relation thereto.

Sec. 2. The sale shall commence on the first Monday in March, one thousand eight hundred and thirty-six, and be continued at such times and places as shall from time to time be fixed by the committee of aldermen on the commons.

Sec. 3. The said committee shall have power, in all cases not not otherwise directed by law, to make such arrangements, give such notices, appoint such order of sale, and make such reservations from sale as they may deem most proper, and may, in their discretion, postpone the appointed day of sale, giving lawful notice of such other or adjourned day of sale.

Approved 26th January, 1836.

Bill of Exceptions.—Ord. No. 315 *of the City of St. Louis.*

Act of 18th March, 1835, of Missouri legislature read to the jury.

This act may be read by consent, from the session acts of 1835, without being copied.

Ordinance of 25th March, 1836, page 219, No. 315, read to show the claim of St. Louis to the land, as follows:

(No. 315.)

An Ordinance concerning lanes, avenues, and public squares, in the Commons.

Be it ordained by the mayor and board of aldermen of the city of St. Louis, as follows:

Section 1. The lanes and avenues, except the one running between blocks four and five, marked on the survey made of the St. Louis commons, made by Charles De Ward, by order of the committee of the board of aldermen on the St. Louis commons, and

approved by the board, and those by this ordinance hereinafter located, are hereby reserved for the purpose of serving as public highways.

Sec. 2. The said lanes and avenues shall be known by the following names, and their breadth and extent shall be as hereinafter specified.

The avenue commencing at Chouteau avenue, running southwardly from thence and parallel to the western base line of the commons, and terminating at the river Mississippi, is one hundred and twenty feet wide, and shall be called Jefferson avenue.

The avenue immediately east of Jefferson avenue, beginning at Chouteau avenue, and running between lots number ten and eleven, shall be sixty feet wide, and shall be called Fulton avenue.

An avenue running immediately east of Jefferson avenue, and between blocks number fourteen, fifteen, twenty-two, twenty-three, thirty-two and thirty-three, shall be sixty feet wide, and shall be called and known by the name of McNair avenue.

An avenue running immediately east of and parallel to Fulton avenue, and running between lots number eight and nine, and blocks number three, four, fifteen, sixteen, twenty-one, twenty-two, thirty-three, thirty-four, thirty-seven and thirty-eight, shall be sixty feet wide, and shall be called and known by the name of Carondelet avenue.

An avenue running immediately east of and parallel to Carondelet avenue, and passing between lots number six and seven, and between blocks number two, three, sixteen, seventeen, twenty, twenty-one, thirty-four and thirty-five, shall be sixty feet wide, and shall be called and known by the name of St. Ange avenue.

An avenue immediately east of St. Ange avenue, and running between lots number two and three, and between blocks number one, two, seventeen and eighteen, shall be sixty feet wide, and shall be called and known by the name of Stoddard avenue.

An avenue commencing at Fulton avenue and running to Jefferson avenue, along the north side of blocks number thirteen and fifteen, shall be one hundred and twenty feet wide, and shall be called and known by the name of Park avenue.

Park avenue extended eastwardly to the east line of lot number nine, and running parallel with the north boundary of said lot, shall be narrowed to sixty feet at said east line, and extended from thence to Carondelet avenue at same width of sixty feet, running parallel with the south boundary of lots number seven, eight and nine.

The two avenues east and west of the park, extending from Park to Lafayette avenue, shall be one hundred and twenty feet wide, and shall be called and known, the eastern one by the name of Mississippi, the western by the name of Missouri avenue.

The square formed and bounded by Lafayette, Park, Mississippi

and Missouri avenues, shall be reserved as a public square, subject to such rules and regulations as the mayor and board of aldermen may, from time to time, make in relation thereto.

Block number eighty-six is reserved as a public square or landing, subject as aforesaid.

The lanes running east and west at right angles, or nearly so, with Jefferson avenue, are forty feet wide, and shall be called in numerical order, the northernmost one number one, and so in regular progression to number fifteen, it being the most southwardly one.

Approved 25th March, 1836.

Bill of Exceptions.

The defendants offered De Ward's survey of the commons of St. Louis, subdividing the same, 27th December, 1838, to which the plaintiff objected, and the same is admitted to show the claim of St. Louis to the land. The same is read to the jury as follows:

(Map of De Ward not copied, as per agreement. For which agreement see page No. 250 of this transcript.—Clerk.)

Thornton Grimsley, a witness for defendant, being duly sworn, testified:

I came to St. Louis the 9th of October, 1816, and have lived here ever since. I was an officer of the city of St. Louis; in 1836 I was an alderman of the city of St. Louis. I knew the St. Louis commons; they were subdivided for sale by Charles De Ward, who commenced in 1835 to subdivide them. Sales took place under that subdivision. The first sales made under that subdivision was in March, 1836. I was present at those sales every day, as alderman and chairman of the committee on commons. We were selling several days; 4 days or more. The sales took place on the ground; the sales took place under a public notice in the newspapers, that the sale of the commons would commence. It was published in every paper in the city. There were handbills every morning of these sales; these notices commenced in January or December for these sales; but I can't remember. We were a long while preparing for these sales. These sales were made on the ground by an auctioneer; there were a great many people attending the sales. All the commons according to De Ward's subdivision were sold, with the exception of a few reservations. Lafayette park was one, and the other a fractional block on the river, near the city work-house. There was likewise a reservation made of 80 acres for a poor-house. I know where the Sugar Loaf is; these reservations are north of the Sugar Loaf. We began our sales at block No. 3, in the northern part of the commons, and sold on east and west till all were sold. The southern part was sold last, except the lot of St. Arnaud Micheau, which we compromised

with him, under the act of the general assembly authorizing the board of aldermen to compromise. There was a discretionary power vested in the committee on commons to compromise with persons claiming adversely to St. Louis. We compromised with Pourcelli and Gamache, Denoyer and Marechal. Micheau, in the first place, claimed first, that he was on a piece of public land that lay between the commons of St. Louis and Carondelet, and that he was going to get a pre-emption there. There were other parties there. The compromises of Pourcelli and others were in consideration of their long possession. I did not hear of their pretensions in any other way than in their own right. Micheau had a piece of land of 15 acres, of the city of St. Louis; he had some enclosed by a fence; and then he had another enclosure made south, to get on the public land. His stone house was on the St. Louis commons, and his first enclosure also. He built a little frame house on the public land after the sale. There were no other improvements south of the Sugar Loaf but Micheau's, on the western end; there were other improvements; can't say if they were houses or fences. I went and got a plat of the public land between the two commons and tried to enter it, but couldn't do it, because it was not of the description of land subject to ordinary entry. The whole St. Louis commons was covered with a fine growth of timber. The trees near Michau were larger than those further west. The whole of this part of the commons was covered with a thick growth of timber. We had to cut roads through the woods to get the trail made for the chain-carriers and surveyors.

A map is here presented to the witness, and he is asked, do you recognise this map?

Answer. I believe this map was made by De Ward, or else it is a first-rate counterfeit. (This was the framed map, and dated 1835.) The land sold from 60 to 100 and odd dollars per acre in that region. Witness is shown the Missouri Republican of January 14th, 1836, and says this is a notice of the sales of the St. Louis commons.

This notice was given daily, up to the 5th day of March, 1836. It was as follows:

Notice of the Sales of the St. Louis Commons.

By order of the board of aldermen, January 12th, 1836.

Sale of St. Louis Commons.

By virtue of an act of Congress passed on the 27th Jana., 1831, further supplemental to the act entitled An act making further provisions for settling the claims to land in the Territory of Missouri, passed 13th June, 1812, and of an act of the general assembly of the State of Missouri, passed 18th March, 1835, entitled "An act to authorize the sale of the St. Louis commons,"

the mayor and board of aldermen of the city of St. Louis will, on the first Monday of March next, at the northeast corner of the St. Louis commons, immediately south of the city, at 10 o'clock a. m., proceed to sell at public auction, to the best bidder, a number of lots and blocks, and fractions of blocks, containing not less than one acre, nor more than forty acres each, within the limits of the St. Louis commons, agreeably to the terms prescribed in the said act of assembly, that is to say:

1. Upon any sale the purchaser is not to pay the amount bid, but an interest of five per cent. a year on the purchase-money as a yearly rent.

2. At the end of fifty years from the day of sale, and every fifty years thereafter, each lot sold shall be assessed by the public assessor, and the purchaser shall pay five per cent. a year upon such assessed value as a yearly rent.

3. Should the interest remain unpaid for six months after due, the board may annul the sale, and proceed to sell again according to the act of assembly.

4. At the expiration of ten years from the day of sale, or at any time after such term, if the annual rent be duly paid, the purchaser may pay the amount bid for any lot, and receive a deed in fee simple, with special warranty only, against the inhabitants of St. Louis and all persons claiming under them.

5. Upon all such sales, deeds are to be executed in duplicate by the mayor and aldermen, and signed and acknowledged by the purchaser, containing all the conditions of sale specified in the act of assembly, and such other provisions as the mayor and board may establish, to secure the payment and collection of the annual rent.

6. If a purchaser neglect or refuse to execute such deed, the lot purchased may be resold, and if it should not bring the sum first bid, the difference may be recovered from the first purchaser, before a justice of the peace. The sale is to be conducted and continued by the committee on the St. Louis commons, under the direction of the mayor and board of aldermen of the city aforesaid.

Jan. 14.

THORNTON GRIMSLEY,
Chairman of Committee on Commons.

☞ A plat of the common can be seen at the city register's office.

T. Grimsley's Testimony continues.

On cross-examination, witness testified:

I don't recollect of testifying in the case of McPherson. I don't remember that Micheau came up to the fence and protested against selling of the commons. There might have been occurrences that

I did not observe, but anything connected with the sale I recollect distinctly. I recollect of Louis Fassen asserting that Carondelet had commons there, but that was down at the town hall. Micheau was with them, and Pourcelli, and three or four of them. I don't recollect of being at Micheau's when the surveyors were here. I don't think I saw Micheau in a passion at any time. In the fall before the sale, the citizens Fassen, Micheau, Pourcelli, and 3 or 4 others, of Carondelet, came to the town hall; they claimed that the land below the Sugar Loaf was commons of Carondelet. The compromise was made with Micheau the winter before the sale. The price of Micheau's land was 15 dollars an acre. I have no recollection of Micheau claiming under Carondelet. To me he never claimed it only as public land; I am positive. I showed these people this piece of public land between St. Louis and Carondelet, and I had the plat of it and gave it to Thomas Chartrand, who was on the west end of the tract. I got that plat at the surveyor general's office, of General Milburn, who was the chief clerk. He gave it to me. I am not positive as to the year when I compromised with Micheau. I am certain the compromise was after I got the plat of fractional section 9 from Milburn. I am not positive when I compromised with Pourcelli. I think that all those persons on the Stringtown road had their respective amounts surveyed for them. I recollect of instructing the surveys to be made by De Ward. My impression is, that the order for survey by De Ward was before the sales. I was on the ground every day, and there never was but one *potest* that I know of. It was my duty to see to the sale of each portion. Elias T. Langham protested against the sale. He is the only one I remember of. This letter was written by me of the date of 2d March, 1837. I don't recollect of any protest being made by Eugene Leitensdorfer on the ground, at the sale in 1836, in the spring or summer. There were 2 sales of the commons, one in spring of 1836 and one in spring of 1837. Some of the land south of the Sugar Loaf may have been sold in 1837. There were a great many compromises proposed; I don't remember how many; there were more compromises proposed than there was land to satisfy them. I compromised with Dent, Soulard, and others. There was a record of all these compromises made by the city of St. Louis. There was a record of all these compromises made with Micheau, Pourcelli, and others. My recollection is, that I reported every case of compromise to the board in writing. Mr. Demun, the receiver of public moneys, or register of public lands of United States, told me this land was not of the description of lands subject to entry. General Milburn told me to put a special application on file, but I did not do it. I made a full report of the sales of 1836 and 1837 to the city of St. Louis, but I am not certain. I am not certain of the *the* time when I reported the sales to Micheau of the parts claimed by him. I

am not positive that Micheau's land was not put up and sold at public outcry. Mr. Micheau may have bought the piece at the north of his enclosure at public sale. Plaintiff hands witness two resolutions of the board of aldermen, of the March, and March, 1836, and asked him if he remembered these resolutions. I recollect that several of these inhabitants of Carondelet appeared there and recommended their claims, and that they went home perfectly satisfied. I showed them that I disputed their claims, and Mr. Primm hooted at the idea. I disputed their claims.

On re-examination, witness testified: I recollect Mr. Paupe; Mr. Fassen. I think Mr. Chartrand talked with me about this matter; they represented themselves a commission from Carondelet; I think they came in the fall when we were preparing for the sale. We had advertised for all persons who had claims to present them.

Question. What did those persons purporting to represent Carondelet claim, and what took place at that time?

Answer. These gentlemen presented themselves with a paper; they were acting as a commission from Carondelet.

We received their paper, and took it under consideration.

Paper called for by Plaintiff.

Plaintiff then called for the paper, but the court refused to compel defendant to produce it, and plaintiff objected and excepted.

We showed this people our data for claiming the commons; they came to show to us that they had claims within our surveys. I thought we satisfied them that our claim was the best; they seemed to think they had as much land as we had; I showed to them the public land between the commons; I showed them Brown's survey and our survey; I believe they were satisfied for this reason and others; I believe I got a bill through for them for the sale of other land; Judge Mullanphy, Hugh O. Neil, James C. Spencer, Wilson Primm and Thornton Grimsley were on that committee; John F. Darby was mayor of the city at that time; Dillon's land was near this city, north of the Sugar Loaf; the claims on the commons of St. Louis were 5 or 6 tiers deep, wedged in sideways and edge-ways.

Fred. Dent's Test.

Frederick Dent, being duly sworn, testified:

I know of a case of Bingham vs. Dent, brought in the common pleas court at the August term, 1841; I held adversely to the common of Carondelet; I remember of the plaintiff in that suit introducing a survey of the commons of Carondelet; the plaintiff objects to this as incompetent and irrelevant.

The plaintiff in that suit introduced that survey to show the extent of the commons of Carondelet; my land in that suit was

south of the des Peres, but within the lines of Brown's survey of the commons of Corondelet.

Brown was a witness in that suit for Bingham and for me; this survey was introduced once in that suit; I know I gained the case; I have been sued by the inhabitants of Carondelet, for land in the Cerré, and in the Bolage claim.

Plaintiff in that suit offered Brown's survey of their commons; the suit was brought at the August term, 1842, of the common pleas; they offered Brown's survey before, and from that time it was made in the first suit I had; they offered it.

On cross-examination, witness testified: I defeated the survey in those suits for Carondelet; my confirmation for Boli and for Cerré was under the act of 4th July, 1836.

On re-examination, witness testified: I claimed them as being inhabited, cultivated or possessed prior to the 20th day of December, 1803.

On re-examination, witness testified: I did not claim this land as an out-lot, but under the confirmation of 1836.

Bill of Exceptions.

The defendant then offered a resolution to authorize Bingham to prosecute a suit against Dent, of 30th April, 1842, to which the plaintiff objected that the same is not properly authenticated, and not within the power of the chairman of the trustees to certify.

The court admitted the same to be read to the jury, and the plaintiff excepted at the time.

The same is read to the jury as follows:

Resl'n authorizing Bingham to prosecute a suit against Dent.

Whereas there is pending in the St. Louis court of common pleas an action of ejectment in the name of John Bingham, against Frederick Dent: now, in consideration of said Bingham consenting that said suit may be prosecuted in his name, the inhabitants of the town of Carondelet do hereby agree to indemnify and have harmless said Bingham against the cost of said suit.

In testimony whereof, the board of trustees of said town have caused to be affixed the seal of the incorporation, this 30th day of April, 1842, and the chairman pro. tem. and secretary of the board have affixed their names as such.

[SEAL.] ANT. BARADA,
Chairman pro. tem.

P. L. McLAUGHLIN, JR.,
Register.

Bill of Exceptions.—John Bingham's Test.

John Bingham, being duly sworn, testified:

I was plaintiff in the suit of Bingham v. Dent. The board of

trustees of Carondelet employed the counsel and paid the costs of said suit. I was the lessee of the town. Mr. Dent, after I had a lease, built a cabin on it. I brought a suit at my own instigation, and under the advice of Carondelet.

On cross-examination, witness testified:

The land was south of the des Peres. The first trial went in favor of Dent. The second trial went to supreme court. I then withdrew from the suit.

Dr. Robert Simpson's Test.

Dr. Robert Simpson, a witness for the defendant, being duly sworn, testified:

I was comptroller of St. Louis. The office of comptroller in 1839 was established; all the matters concerning the commons were referred to me, and I had the control of all sales by ordinance. I was required to sell at different periods, and did sell all the lots that had not been sold or that had been forfeited. I examined everything and put down every sale and every forfeiture. I begun to sell in 1841. The first sale I had De Ward for salesman. I made out a list of the lots to be sold according to the block and lot, and printed these lists in the papers and in handbills; and De Ward made surveys and stakes and sold all the lots on the ground. We gave general notice to everybody. There were lots sold in the southern part of the common, below the Sugar Loaf, to the extreme end. There were a good many people there. There were some of the commons covered with brush.

On cross-examination, witness testified:

I attended the sales in person. None of the land I sold was occupied. There were some old Frenchmen in the lower part of the commons who claimed their possession. Lanhead had an improvement there. All of these were since 1841. Every sale ever made is on file in the comptroller's office, and the day and sale and the date of forfeiture.

R. M. Field's Test.

R. M. Field, being duly sworn, testified:

I was employed as general attorney for Carondelet in 1849 to 1851. I was attorney for Carondelet when the city was organized. I acted as counsel for Carondelet in the case of Gamache vs. Piquinot in the St. Louis circuit court; I was also counsel for the corporation in the case of Carondelet vs. Dent. The title of the Carondelet commons was directly involved. The case of Dent was for land south of the des Peres. The case of Piquinot was for land between the common-fields and the river des Peres. In both these cases Brown's survey of the Carondelet commons was introduced in support of the title of Carondelet, and other evidence was also given to show that Brown's survey was correct. The American title

paper was Brown's survey. The case of Gamache v. Piquinot the verdict was for the defendant. The case of Carondelet vs. Dent was commenced by Mr. Whittelsey; we tried the case and won it, and it went to the supreme court and was reversed.

On cross-examination, witness testified:

I made the point in the Gamache claim that the location was not where the plaintiff sued for it; I also made the point that the statute of limitations should apply. Judge Hamilton would not allow us that defence.

Bern. Poepping's Test.

Bernard Poepping, being duly sworn as a witness, testified:

I am the register of Carondelet, and have been for several years. The certificate to these resolutions of the board of trustees *are* made by me, and the blanks appear on the records which are before me. The blanks were occasioned by the old records being eaten up by the rats or mice.

On cross-examination, witness testified:

These 3 books that I hold in my hand are the records of the proceedings of the trustees of Carondelet from 1832 to 1838 or '9. The records are delivered to plaintiff's attorney to be used on this trial.

Bill of Exceptions.

Defendant then read in evidence a petition of 22d October, 1832, of certain inhabitants of Carondelet, as follows:

Pet'n of cert'n Inhb'ts of Carondelet.

Carondelet, July 20th, 1831.

To the Honorable the Judges of the County Court for the county of St. Louis:

The petition of divers inhabitants of the village of Carondelet, township of St. Louis, county aforesaid, humbly showeth, that your petitioners labor under inconveniences for the regulation and government of their village and commons attached thereto, bounded as follows: beginning in the main channel of the Mississippi river, on the north by the St. Louis commons; thence bearing north 57° 59 west, to the line of the common-field; thence south with the line of the common-field to the river des Peres; thence east with the river des Peres to the main channel of the Mississippi; thence up the main channel of the Mississippi river to the place of beginning.

Your petitioners therefore humbly pray your honors, that they may be incorporated, and a police established for their local government, for the preservation and regulation of their town and com-

mons appertaining to the village of Carondelet; and your petitioners, as in duty bound, will ever pray, &c.

Joseph Chitellion,	Eugene Leitendorferer,
Louis Couston,	Cattarin Gamass,
J. B. Chatillion,	Francis Gate,
H. H. Talbot,	Chas. C. Saniganette,
Joseph Green,	Francis Deroin,
John B. Provo,	Wm. P. Madslop,
George Shoults,	Abraham Ringer,
Louis Guion,	Wm. G. Martin,
Gabriel Constant,	Antoine Rondy,
P. D. Barada,	Angston Fourney,
Pre. D. Tellore,	Wm. A. Head,
Thomas Shatron,	Francis Danoyer,
Joseph Shatron,	R. C. Bolwell, or Grorsire,
Newel Shatron,	Bercair,
P. J. Shultz,	Antoine Malat,
Joseph Denney,	Alexsel Pagey,
Joseph Le Coatway,	Antoine Motiar,
T. F. Grey,	Jacob Lasp,
Ant. Barada,	S. Robisons,
Henry O. Barada,	S. J. Cesluns,
A. Tenfrau,	Chas. Tillman,
Lewis Le Coatway,	James N. Morgan,
Zesant Pigeon,	John Wright,
Isdare Barada,	Hiram Wright,
Richard Mallegan,	Jacob R. Stine,
Pascal Mallate,	James C. Evans,
Peter Mallate,	F. Hy. Faver.
L. Fassen,	

57½–55. Signed—55.

Res'n Board of Trustees of Carondelet, Oct. 22, 1832.

At a meeting of the board of trustees of the town of Carondelet, held on the 22d day of October, 1832, amongst other proceedings, the following were had, to wit:

"A communication having been received from the inhabitants living west of Fourth street, requesting that they might be included within the line of the incorporated town, Mr. Eiler, having stated that he could survey the town immediately, and that his charge for doing the same would be $5.00 per day, upon which it was concluded to employ him, and he was directed to proceed to work immediately."

Incorp'tn of Carondelet.

Also the order of the county court incorporating Carondelet.

In the St. Louis county court—August 20th, 1852.

STATE OF MISSOURI,
County of St. Louis, ss.

And now, at this day, comes in court Jesse Colburn, and presents to the court the petition of certain inhabitants of the village of Carondelet, praying to have said village and commons appertaining thereto incorporated, setting forth the metes and bounds thereof. Whereupon the court examine the said petition setting forth the metes and bounds aforesaid, and on due consideration thereupon had, it manifestly appears to the full satisfaction of the court now here, that more than two-thirds of the taxable inhabitants of said village have signed said petition, and considering that the prayer of said petition is reasonable, therefore, agreeably to the statute in such case made and provided, it is considered, ordered, and decreed by the court, that said village and the common thereto belonging, situate and bounded as follows, to wit: commencing at the Mississippi at the Cave spring, thence running west to Fourth street, thence south twenty-six hundred and forty yards, from thence east to the Mississippi river, be and the same are hereby declared to be incorporated, and that henceforth the inhabitants within the aforesaid metes and bounds shall be a body politic and corporate, by the name and style of "The inhabitants of the town of Carondelet," to all intents and purposes. And the court appoint Louis Fasseux, Eugene Leitensdorfer, Auguste Dube, Louis Guion, and Joseph Chattillion trustees of the same, to serve until their successors shall be duly chosen and qualified according to the provisions of the statute.

STATE OF MISSOURI,
County of St. Louis, ss.

I, Josiah Thornburgh, clerk of the county court within and for the county aforesaid, certify that the foregoing is a true copy of the incorporation of Carondelet, as the same appears on record in my office.

Given under my hand and seal of said court at office in the city
[SEAL.] of St. Louis, this 10th day of March, A. D. 1857.

JOSIAH THORNBURGH, *Clerk.*

Res'n Board of Trustees of Carondelet, Nov. 19, 1832.

Also a resolution of the board of trustees of Carondelet of 19th Nov., 1832, as follows:

Carondelet, 19th Nov., 1832.

"The board met pursuant to adjournment. Present, Messrs. Leitensdorfer, Fassen, Chattillion, and Mallet. The register stated to the board that he had received the sum of $10 50 for licenses granted since the 1st instant, upon which he was directed to apply

the said amount for the purpose of paying the hands in Mr. Eiler's employ."

Eiler's Report of 26th Nov., 1832.

Also Eiler's report of 26th November, 1832, as follows:

Carondelet, 26th Nov., 1832.

"The board met pursuant to adjournment. Present, Messrs. Leitensdorfer, Fassen, Chatillon, and Mallet.

"Mr. Eiler, the county surveyor, having stated to the board that he had *not* with considerable opposition from the inhabitants of Carondelet in regard to surveying the town, as the streets in many instances interfered with the lots as they were at present occupied:

"Upon due consideration had on the subject, it was unanimously agreed that Mr. Eiler be furnished with instructions to enable him to proceed to surveying the town.

"*Instructions given to Mr. Eiler, county surveyor.*

"Mr. Eiler will proceed to establish Mr. Colburn's lots upon as favorable terms as Mr. Colburn will consent to, after which he will establish the streets. Each block must be 300 feet (f. m.) square, with the exception of the block immediately above Mr. Colburn, which is to be left as large only as circumstances will permit, in order to derange the present situation of the lots above it as little as possible. Main street is to be 48 feet wide, and each of other streets running parallel with it is to be 35 feet wide; the cross streets shall be 30 with the exception of F street, which is 12 feet wide, and 9 street, which is cut as there is not sufficient ground to leave it, without interfering too much with existing arrangements. Mr. Eiler will give such a direction to Main street as will leave a sufficient quantity of ground along the river for a tow. After which, the board adjourned."

Proceed's of Board of Trustees of 3d and 10th Dec'r, 1832.

"Also proceedings of board of trustees of 3d December, 1832, and 10th December, 1832, as follows:

Carondelet, 3 Dec'r, 1832.

"The board met pursuant to adjournment.

"Present, Messrs. Leitensdorfer, Fassen, Chatillon, and Mallet.

"Mr. Thos. Chartrand having produced a certificate of his election as a member of the board:

"The trustees having determined to make an application to the legislature of the State of Missouri for permission to sell such lots, within the town of Carondelet, as were heretofore commons, the register was directed to prepare the necessary documents to accompany the petition.

"Whereupon the board adjourned.

Carondelet, 10 Dec'r, 1832:

"The board met pursuant to adjournment.

"Present, Messrs. Leitensdorfer, Fassen, Chatillon, Mallet, and Chartrand.

"The register having prepared the documents necessary to accompany the petition to the legislature, the petition and a map of the town which was obtained from Mr. , all of which being submitted to the board, the , which approved of the same, and directed that be enclosed to Dr. Wm. Carr Lane, a repre county of St. Louis, together with a letter of instructions.

"After which the board adjourned.

Proceed's of 13th May, 1833.

"Also proceedings 13th May, 1833, as to register filing plat, as follows:

Monday, May 13th, 1833.

"The board met.

"Present, Messrs. Leitensdorfer, Fassen, and Mallet.

"Ordered that the register file a copy of the plat of the town of Carondelet with the recorder of the county of St. Louis.

Proceed's 27 May, 1833.

"Also proceedings 27th May, 1833, as to copies of act of 1833, as follows:

Carondelet, May 27th, 1833.

"The board met pursuant to adjournment.

"Present, Messrs. Leitensdorfer, Mallet, Colburn, and Fassen.

"On motion of Mr. Colburn it was unanimously agreed to have 100 copies of the law entitled 'An act authorizing the corporation of Carondelet to sell and convey certain lots of ground,' passed at the 7th general assembly of the State of Missouri, approved February 13th, 1833, printed, with a notice attached thereto relative to adverse claimants, and that the register distribute the same."

STATE OF MISSOURI,
County of St. Louis, ss.

I, Bernard Poepping, register of the city of Carondelet, do hereby certify that the foregoing extracts from the proceedings of the board of trustees of the town of Carondelet, contained in quotation marks, are correctly copied from the journal of said proceedings, as the same now remains of record in my office.

In testimony whereof, I have hereto set my hand and affixed the seal of said city, this 23d day of February, A. D. 1858.

[SEAL.]

BERNARD POEPPING,
Register.

Bill of Exceptions.

Defendant then introduced and read in evidence plat of Eiler's survey of the village of Carondelet as follows:

[*For plat see original, page* 88.]

Remarks.

On the river Mississippi is left a tow of about 70 feet English measure. Main street is 48 feet English wide, and from the northern to the southern boundary line of the town 26.24 yards long. 2d, 3d, and 4th streets are each 35 feet wide. The cross streets are 30 feet English wide, with the exception of F street, which is only an alley 12 feet wide, and G street is entirely shut up, owing to the circumstance that there was not sufficient ground for the blocks when those streets should maintain their proper width. The blocks are 300 feet French, 320′ 8″ English square, with exceptions of fractions on river side, and other fractions whose measurement are given on the plat.

M. L. EILER,
Deputy Surveyor.

STATE OF MISSOURI,
County of St. Louis, ss.

I, the undersigned, recorder in and for the county of St. Louis, certify the foregoing to be a true copy of a plat of the town of Carondelet, of the Carondelet common, and of the remarks by L. M. Eiler, deputy surveyor, as fully as the same remains of record in my office in plat-book No. 2, page 68.

Witness my hand and official seal, the 15th day of February, 1858.

Bill of Exceptions.

Plaintiff at the time objected to the plat outside of the survey as unauthorized, and no part of the survey ordered, but the court admitted the same and the plaintiff excepted.

C. C. Whittlesey's Testimony.

C. C. Whittlesey, being duly sworn, testified:

I was employed as counsel by the old corporation, and the new corporation paid me; I was employed in the cases of Bingham vs. Dent, and Carondelet v. Dent; Brown's survey was used on those trials for the support of the title of Carondelet and used at the trials; the claim for commons was made under that survey. Rector's survey was used also, but Brown's survey was mainly relied upon.

Carondelet v. Dent was tried and decided for Carondelet, and went to (the) Supreme Court and was reversed, and then I don't know what became of it. I was attorney in the case of Dent v. Sigerson. Sigerson claimed under Carondelet through Bingham; the surveys of Rector and Brown were used in that case; that case was decided in favor of plaintiff or the title of Carondelet, and was taken to the Supreme Court, and *the* reversed. The trial of Carondelet v. Dent was in 1852.

On cross-examination witness testified:

I did the things I speak of, and ascertained the facts I have spoken of while acting as counsel of Carondelet.

Act of 13th February, 1833.

Act of 13th February, 1833, was read; &

Whereas it has been represented to this general assembly that there are certain lots of ground within the limits of the town of Carondelet, in the county of St. Louis, which belong to the inhabitants of that town in common; and whereas it is also represented that the sale of the said lots would greatly conduce to the present and future welfare of the said town: therefore,

Sec. 1. Be it enacted by the General Assembly of the State of Missouri, That the board of trustees of the town of Carondelet shall have authority to sell and convey in fee, all the vacant or unoccupied lots of ground to which the inhabitants of the town of Carondelet shall have the legal or equitable title, which are included in the survey of said town of (Carondelet) made by Lawrence M. Eiler, deputy surveyor of the county of St. Louis, in November last, by authority of the said board of trustees.

Sec. 2. Be it further enacted, That the sale of the said lots shall be made in the town of Carondelet at public auction, at such times and places as the board of trustees of the said town may, from time to time, direct, and that three months' previous public notice shall be given of the time and place of each sale.

Sec. 3. Be it further enacted, That the inhabitants of the said town shall have power to convey all the lots of ground thus sold upon the payment of the purchase-money, according to the conditions of the sale; and the chairman of the board of trustees, in their behalf, shall have authority to execute a deed in fee simple for the lots thus sold, with special warranty against the claims of the

inhabitants of the said town, and against all persons claiming under them, which deed shall be countersigned by the recorder, and shall have the corporate seal of the said town affixed thereto, and shall be effectual to convey all the legal and equitable claims to said lots which accrued to the inhabitants of the said town under the French or Spanish governments, and by virtue of acts of the Congress of the United States.

Sec. 4. Be it further enacted, That in all cases where the legal or equitable title of the inhabitants of the said town to any of the lots of ground included in the survey mentioned in the first section of this act is contested by an adverse claimant, that the board of trustees aforesaid shall have authority at their discretion to compromise and settle with each claimant, without suit at law or in equity, upon the most favorable terms that can be obtained; and in case any such compromise shall be made and complied with in good faith, a deed of conveyance in fee simple shall be executed to such adverse claimant, by the president of the board of trustees aforesaid, in the manner and under the restrictions prescribed by the preceding section of this act.

Sec. 5th. Be it further enacted, That the funds arising from the sale and release of the lots aforesaid shall be applied by the trustees of said town, at their discretion, agreably to the provisions of the ordinances of the said town, for the common benefit of the inhabitants of the said town, and the board of trustees of said town are hereby authorized to perform, or cause to be performed, all acts that are or may become necessary to carry into full effect the several provisions of this act.

This act to take effect and be in force from and after its passage.

Approved, February 13th, 1833.

Bill of Exceptions.

Defendant offered in evidence the assignment of school lands to the village of Carondelet. Plaintiff objected that the out-boundary was not run pursuant to any law, and because the out-boundary was constructed upon a survey then disapproved, and is irrelevant and immaterial.

The same was then read to the jury as follows:

Assignment of School Lands to Carondelet.

OFFICE OF THE SURVEYOR GENERAL OF ILLINOIS AND MISSOURI,
St. Louis, October 24th, 1855.

The survey of the piece of land which is herein platted and described has been executed by Jos. C. Brown, deputy surveyor in the year 1839, under instructions and authority from this office, and in pursuance of the instructions of the Commissioner of the General Land Office to the surveyor general, dated the 11th October,

1853. The said piece of land is hereby designated and set apart to the town (now city) of Carondelet for the support of schools therein, under the provisions of the 2d section of the act of Congress of the 26th May, 1824, entitled "An act supplemenatry to an act, passed on the thirteenth day of June, one thousand eight hundred and twelve, entitled 'An act making further provision for settling the claims to land in the Territory of Missouri,'" it being situated in the common-field of Carondelet, and within the bounds of the survey directed to be made by the first section of the act of Congress of the 13th June, 1812, aforesaid, so as to include the town-lots, common-field lots and commons of the town of Carondelet, and does not, together with the other lands designated and set apart to the said town for the support of schools under the aforesaid 2d section of the act of 26th May, 1824, amount to one twentieth of the whole lands included in the general survey directed to be made of said town of Carondelet by the aforesaid 1st section of the act Congress of the 13th June, 1812.

The said piece of land was not, so far as the records of this office and the books in the office of the recorder of land titles show, rightfully owned or claimed by any private individual, on the said 13th day of June, 1812, nor was it held as commons, belonging to the said town, neither has it been reserved by the President of the United States for military purposes.

Ts. 44 and 45 N., R. 73, 5th pl. m'n.

[*For plat see original, page* 91.]

Description: Beginning at an old stone, set in the western boundary of the common-field of Carondelet, marked with a cross on the top, the northwest corner of the lot confirmed to Peter Shoultz, under Christopher Shoultz, survey number eighty, and the most western corner of this survey, from which a post-oak three and a half inches in diameter bears north sixty degrees and thirty minutes west, distant seventeen links, and a hickory three and a half inches in diameter bears south seventy-four degrees west, distant twenty-two and a half links; thence south fifty-six degrees east, with the northern boundary of the Shoultz lot, seventeen chains and eighty-two links, to an old stone marked with a cross on the top, the southwest corner of a lot confirmed to Francis Porier under John Persellee, survey number seventy-eight, and the most southern corner of this survey; thence north thirteen degrees and forty-five minutes east, with the western boundary of the lot of Porier, four chains and thirty-four links to an old stone set in the southern boundary of the lot of Robert Buchanon's legal representatives under Louis des Noyers' survey number seventy-six, marked with a cross on the top, the northwest corner of the lot of

Porier and a corner of this survey; thence north fifty-six degrees west, with the southern line of the lot of Buchanon, eight chains and ninety-eight links to a stone sixteen inches long, thirteen inches wide and two and a half inches thick, set twelve inches into the ground, at the intersection of the southern line of the Buchanon lot with the southern boundary of the St. Louis Prairie des Noyers common-field lot of Charles Sanguinette, under Jean B. Tison, survey number two thousand and twenty-nine, a corner of this survey; thence north eighty-two degrees and thirty minutes west, with the southern boundary of the lot of Sanguinette, eight chains and thirty-one links to a limestone fifteen inches long, twelve inches wide and two and a half inches thick, set ten inches into the ground, at the intersection of the southern boundary of the lot of Sanguinette with the western boundary of the Carondelet common-field, the most northern corner of this survey, from which the southwest corner of Sanguinette's lot bears north eighty two degrees and thirty minutes west, distant one chain and forty links; thence south fifteen degrees and thirty minutes west, with the western boundary of the Carondelet common-field, forty links, to the beginning corner.

This survey, which is, as aforesaid, situated in the common-field of Carondelet, and within townships forty-four and forty-five north of the base line, range 7 east of the fifth principal meridian, in the State of Missouri, contains five acres and sixty hundredths of an acre of land, and is numbered one hundred and twenty-six of the series of Carondelet lands.

A certified copy of the foregoing document was transmitted to E. Casselberry, esq., attorney for the city of Carondelet, on the 25th October, 1855.

JNO. LOUGHBOROUGH,
Surveyor General.

See his application of 25th June, 1855.

OFFICE OF THE SURVEYOR GENERAL FOR ILLINOIS AND MISSOURI,
St. Louis, June 21st, 1858.

The foregoing plat and description of survey No. 126 is correctly copied from pages 173, 174 and 175 of "Record of surveys school lands, towns and villages, Missouri," on file in this office.

JNO. LOUGHBOROUGH,
Surveyor General.

Jno. Witnell's Test.

John Witnell, being duly sworn, testified:

I have lived here in St. Louis since 1831. I owned some land in the St. Louis commons, so called, in the northwest corner of block

84, according to De Ward's survey. My house is there. I have owned that since 1843, when I bought it from Wilson Primm. It was sold in 1836 by the city to Mr. Primm, or to Mr. Turnbull. I think it was improved shortly after Mr. Turnbull bought it. I claim my title under St. Louis. I know the line of commons now claimed by Carondelet. It does not touch the block I live on. I own the southwest ¼ of block 84, and it takes part of that. I claim ownership of that under St. Louis title. I bought that in 1843 also. It makes a part of the grounds of my residence. It is enclosed, and has been a great part of the time that I have owned it. I began living there since 1844. I have been improving that property all the time. There are improvements on the portion of the commons now claimed by Carondelet. Mr. Blair has an improvement on the northwest ¼ of block 88. It was improved in 1844; there was a small cabin on it when I went down there, and there was some enclosure. Mr. Blair has improved there. (Objected to as irrelevant.) The improvements are not costly. He has 9 or ten acres. There is a block east of Blair, on which the home of the friendless is, or widows' home. Those improvements were made shortly after the first sale of 1836, by Mr. Wetmore. I can't tell how long after that sale it was improved. There is a large building on that property, cost $10,000; I think that has been built some 7 or 8 years. The grounds around it are improved. There is also a brick building on the same lot. That has been built some three or 4 years. These improvements are right on the road from St. Louis to Carondelet. There are about 10 acres in this piece, on the west side of, and adjoining the Carondelet road. Mr. Waneres has an improvement south of that. He *has* gone there in 1836; was one of the first purchasers. He is immediately on the road, in the southwest quarter of block 88. Mr. Blow is there also, on the east side of the Stringtown road. He has improved some two or three years. He is in a fractional lot or block east of the Stringtown road. That ground of Mr. Blow's must have been improved more than 20 years. I do not remember any others. McAnulty also has a lot of 20 acres enclosed.

Objection.

On cross-examination, witness testified:

He enclosed several years ago. I can't say how long. Not as early as my improvements, excepting the Micheau place, one lot north of it; all the rest has laid open and unenclosed ever since. I went there in 1844. Everybody cut down the small trees that grew upon the vacant property.

Bill of Exceptions.—Proceed's of Trustees of Carondelet, 4 March, 1848.

Defendant then read to the jury the proceedings of the trustees of Carondelet, of 4th March, 1848, as follows:

Board of trustees of the town of Carondelet, held on the 4th of March, 1848, the following proceedings were had, to wit:

"Board met by special call: Present, Messrs. Antoine Motier, Joseph Courtois, Michael Conrad, and Mr. ———, chairman.

"The proceedings of the former meeting having been read and approved of—

"A petition directed to the United States Senate was presented by Mr. Primm, the attorney, appointed by a committee of two members of the board, to settle the boundaries of the commons south of the river des Peres, which petition was ordered by the board to be signed by the chairman and countersigned by the register, and have the seal of the town of Carondelet attached to it, which was done as directed.

"Said petition claims nine thousand and upwards arpents.

"The board adjourned till Saturday, 11th inst."

STATE OF MISSOURI,
County of St. Louis, ss.

I, Bernard Poepping, register of the city of Carondelet, do certify that the foregoing proceedings contained within quotation marks are truly and correctly copied from the records of the proceedings of the board of trustees of the town of Carondelet.

In testimony whereof, I have hereunto set my hand and affixed the seal of said city this twenty-third day of March, A. D. 1852.

[SEAL.]

BERNARD POEPPING, *Register.*

Bill of Exceptions.

Defendant then offered the petition of the inhabitants of Carondelet to the Senate of the United States, of the 4th of March, 1848.

Plaintiff objects to this as not certified or properly authenticated.

Mr. McPherson's Testimony.

Mr. McPherson, being duly sworn, says that he applied in 1850 for a copy of the original of this, and compared that copy with the original. I compared this copy with the other copy, and believe it to be a copy of the original. This I know to be a copy of the one certified by the clerk of the Senate, which I compared with the original in the House of Representatives. The original in the mean time had been withdrawn. I have seen it after it was withdrawn, in the possession of Willis L. Williams, who was attorney for Carondelet. When I took this copy the original had been withdrawn, in January, 1852. Copy was made after the withdrawal of the original.

Defendant then offered said petition as a sworn copy, and as a certified copy.

The plaintiff still objected, that the proof was not sufficient to authorize the admission of this copy in evidence, and that the paper is not so certified as to be admissible in evidence.

The court admitted the petition to be read, and the plaintiff then and there excepted.

The same was read to the jury as follows:

Pet'n of the Inhab'ts of Carondelet to the Senate of U. S., 4 Mar., 1848.

To the Honorable the Senate and House of Representatives in general Congress assembled:

The petition of the inhabitants of the village of Carondelet respectfully represents, that they are much troubled in their claim to commons confirmed to them by the acts of Congress of June 13th, 1812, and January 27th, 1831, on account of the doubts arising as to the extent of the lands confirmed to your petitioners.

They further present, that in the year 1834, one Joseph C Brown, a deputy surveyor of the United States, acting under instructions from Elias F. Langham, surveyor general of the United States for Missouri and Illinois, dated Feb'y 10th, 1834, did make a survey of said commons, following the lines of a previous survey of Elias Rector in 1817, and which survey included the quantity of over nine thousand acres.

Your petitioners thought that this survey would be conclusive upon all persons as to the extent of the commons, and that if any dispute should arise as to the extent of said commons, that the matter would be settled by judicial decisions, and by the law of the land.

Your petitioners further state, that in 1841, seven years after this survey of Brown's had been made, that the Commissioner of the General Land Office set aside said survey, and ordered a resurvey of the same, but by what authority this was done they are unable to say; but this they do know, that it has caused trouble, confusion, and much litigation.

They would further represent, that the corporate authorities of the village of Carondelet, acting under the belief that this survey of Brown's was conclusive testimony of the extent of their claim to commons, did, in the year 1838, proceed to subdivide said land claimed as commons into small tracts, taking for the out-boundaries the lines as established by the survey of Brown. These subdivisions have been leased by the village authorities to over one hundred persons, all of whom claim under the commons. All these lessees feel alarmed, and are unwilling to make any permanent improvements until they feel assured that they will not be deprived of their property, except by their own default.

In consideration of the above facts, your petitioners humbly pray your honorable body to pass an act confirming to the inhabitants

of the village of Carondelet their title to the commons according to the survey of Brown, as made in 1834, under the instructions dated Feb. 10th, 1834, so that the matter and disputes may be closed, as far as any legislative enactment can do, leaving individuals who have conflicting rights to settle the same in the judicial tribunal of the county.

In making this request, they feel assured that they ask nothing but what they are legally entitled to by the law of the land, as some of the courts of this State have decided that the survey of said Brown is conclusive as to the extent of the commons, and reference is hereto made to the reports of surveyor general Milburn upon this subject.

And your petitioners, as in duty bound, will ever pray, &c.

Done at Carondelet, this fourth day of March, eighteen hundred and forty-eight; signed by the president of the board of trustees of said village, with the corporate seal of said village affixed.

[SEAL.]

PETER D. BARADA,
Chairman.

MICHAEL CHARTRAND,
Register.

The undersigned, inhabitants of the village of Carondelet, humbly second and support the above petition, and join in the prayer thereof.

L. Fassen,
Peter D. Garmache,
David Briggs,
Bartholomew Guion,
Egnal Bouchy, jun.,
Francois Rille,
Peter Poucely,
Francis Semay,
Benoist Marachel,
Louis Gamache,
Anthony Robert,
Antoine Robart,
Vincent Guion,
Henry Roy,
Antione Chouquette,
Michael Conrad,
Hamilton Micheau,
Egnal Bouchy, sen.,
Julien Gamache,
Louis Guion,
Bazle Paulet,
Antoine Motier,
John Maraud,
Alex. Denoyer,
Joseph Poucely,
Antoine Poucely,
Juny Grucho.
Peter Chatillion,
Antoine Marachal,
Michael Chartrand,
John B. Bovette,
Joseph Vien,
Thomas Chartrand,
Joseph Courtois,
Amable Chartrand,
Antoine Tayson,
John Poucely, sen.,
Joseph Shoults,

John Poucelli, jun.,	John Fistor,
William Uno,	Jules Choquette,
Alexis Pagey,	Antoine Julien,
Antoine Revance,	John Conrad,
Louis Tesson,	Geo. F. Eichelberger,
Auguste Gamache,	Francis Marachal,
Paul Robert,	M. Miller,
Martin Crole,	Thos. Sheilds.

STATE OF MISSOURI,
County of St. Louis, ss.

Before me, the undersigned, a justice of the peace within and for the township of Carondelet, county of St. Louis, appeared Richard Barada, who, being by me duly sworn, upon his oath says, that the foregoing names were nearly all written by him with the consent of each and every one signed to the foregoing petition, and the balance signed their own names.

RICHARD BARADA.

Sworn and subscribed to before me, the 6th day of March, A. D. 1848.

HAMILTON MICHEAU,
Justice of the Peace.

A true copy of the original on file in the office of the House of Representatives.
January 3, 1850.

THOS. J. CAMPBELL,
Clerk H. R. U. S.

WASHINGTON CITY, *January 13th*, 1855.

I certify that the foregoing is a true copy of the original copy certified by the clerk of the General Land Office, by William M. McPherson, in January, 1850, and that the said copy was on file with the papers in the case, when said papers were submitted to the Secretary of the Interior for his approval of the location made by the State of the fract'l section 9, T. 44, R. 7 E., under the 8th section of the act of Sept. 4, 1841. I being at that time a clerk in the General Land Office, and having charge of the Missouri land business in that office, it became my duty to examine and report upon such cases to the Commissioner of the said office. I thus had occasion to examine the copy of said petition to Congress, filed as aforesaid; which copy is with the papers concerning the Carondelet commons now before me, in the Department of the Inte-

rior, for examination, concerning the claim of Carondelet to commons south of the river des Peres.

JOHN HOOD,
Clerk in Charge of Land Claims in the Department of the Interior.

Evans Casselberry's Testimony.

Evans Casselberry, being duly sworn, testified:

I have been the counsel of Corondelet; was so on the 25th day of June, 1855. I wrote a similar letter to this letter, I suppose. I began on the 20th June, 1855. This was a small strip of land near the northwest corner of the common-field of Carondelet. The assignment was made to the use of the schools, according to the request of this letter.

On cross-examination, witness testified:

At that time the corporation of Carondelet claimed commons up to the Sugar Loaf. The out-boundary would include the common-fields under any circumstances.

Bill of Exceptions.

Defendants then offered a letter from Evans Casselberry, as attorney of Carondelet, of 25th June, 1855, to which plaintiff objected as irrelevant and incompetent, but the court admitted the same to be read to , and plaintiff then and there excepted.

The letter was read to the jury, as follows:

Letter from E. Casselberry.

To the Surveyor General of Illinois and Missouri:

SIR: The undersigned, attorney for the former town (now city) of Carondelet, respectfully asks you to survey, designate, and set apart to the inhabitants of said city, for the support of schools in said city, the lot of land in the common-field of Carondelet, which is bounded on the east by survey No. 78, on the south by survey No. 80, on the west by the western boundary line of said common-field, and on the north by survey No. 76, containing about seven acres and a half.

The undersigned states that said lot is not rightfully owned or claimed by any private individual.

Yours, respectfully,
E. CASSELBERRY,
For the City of Carondelet.

June 25th, 1855.

OFFICE OF THE SURVEYOR GENERAL,
St. Louis, Feb'y 3d, 1858.

I hereby certify that the foregoing is a true and complete copy of the original on file in this office.

JNO. LOUGHBOROUGH,
Surveyor General.

Jno. F. Darby's Testimony.

John F. Darby, being duly sworn, testified:

I have lived in St. Louis since December, 1826, permanently. I have practised law. I have dealt in real estate, more or less, since my residence here. I have held the office of alderman 1 year, in 1834, and 4 years the office of mayor. Was mayor in 1835, '6, '7, and 1840, of the city of St. Louis. The land between the arsenal and Carondelet had hardly any improvements below Madame Soulard's place, at the junction of Carondelet avenue and 5th streets. All the land south of that had scrub-oaks and chenaux and hickory. West of the Carondelet road there was hardly any improvements anywhere. There were some French on the east. Between the arsenal and Carondelet there was hardly anything except the thicket. It was a perfect thicket of small growth, from the arsenal to Carondelet, up to 1838. There was this thicket at the time of the sale, so that we had to cut the thicket to get through. From the Sugar Loaf south, there is first a ravine, and there the road runs round it. The ground south of the Sugar Loaf was very much broken with sink-holes. It was not worth anything for agricultural purposes. No one would have grubbed and enclosed the land if you had given it to him. The Sugar Loaf is a little mound of no very great height. Everybody sees it to the left of the road. It might be noticed if no attention was called to it.

On cross-examination, witness testified:

I have an indistinct recollection of old Fassen, Paupe, or Leitensdorfer, coming to me about this commons north, but can't remember what they said.

Bill of Exceptions.

Ordinance of 27th December, 1851, of the city of Carondelet, was then read by the defendant to the jury, as follows:

Ord. of Carondelet, 27 *Dec.*, 1851.

No. 50.—An ordinance to convey certain lands in the common of Carondelet to the United States.

Be it ordained by the city council of the city of Corondelet, as follows:

Sec. 1. The mayor is hereby authorized to execute a deed to the government of the United States for a tract of land in the common

of Carondelet, south of the river des Peres, known and designated on the plat of survey of said common as the "Jefferson Barracks tract;" which tract is bounded and described as follows: containing about seventeen hundred and two acres, bounded on the north by a tract of land confirmed to Julien Chouquette, on the east by the Mississippi river, on the south by lots in the subdivision of the said common, by Jasper Meyer, numbered one hundred and seventy-nine, one hundred and eighty, one hundred and sixty-one, one hundred and sixty-two, one hundred and sixty-nine, one hundred and seventy, and one hundred and seventy-one (Nos. 179, 180, 161, 162, 169, 170, and 171,) and on the west by lots of same subdivisional survey, numbered one hundred and twenty-four, one hundred and twenty-five, one hundred and thirty-three, one hundred and thirty-four, one hundred and thirty-five, one hundred and thirty-six, one hundred and thirty-seven, one hundred and thirty-eight, and one hundred and seventy-eight, (Nos. 124, 125, 133, 134, 135, 136, 137, 138, and 178.)

Sec. 2. The deed shall be signed and acknowledged by the mayor, attested by the register, under the official seal of the city.

Sec. 3. The deed, when executed, shall be transmitted by the mayor to the authorized agent of Carondelet in Washington city, to be retained by him, until directed by the mayor, under a resolution of the city council, to deliver the same to the proper agent of the government of the United States, in Washington city.

This ordinance to take effect from and after its passage. Approved Dec'r 27th, 1851.

Bill of Exceptions.

Ordinance of Carondelet of 27th June, 1854, No. 152, approved and read to the jury as follows:

Ord. of Carondelet, No. 152, *June* 27*th*, 1854.

No. 152.—An Ordinance to convey the Jefferson Barracks tract to the United States.

Be it ordained by the city council of the city of Carondelet as follows:

Sec. 1. The mayor is hereby authorized to execute a quit-claim deed to the government of the United States for a tract of land in the common of Carondelet, south of the river des Peres, known as the Jefferson Barracks, and more particularly described in ordinance No. 50, entitled "An ordinance to convey certain lands in the common of Carondelet to the United States," approved Dec'r 27th, 1851.

Sec. 2. The deed shall be signed and acknowledged by the mayor, attested by the register under the official seal of the city, and shall be transmitted by the mayor to the Secretary of the Interior of the United States.

Sec. 3. Ordinance No. 53, approved January 29th, 1852, requiring such deed to contain a reversionary clause, is hereby repealed. Approved June 27th, 1854.

Bill of Exceptions.

Deed of the city of Carondelet to the United States for the Barracks tract, dated 25th October, 1854, was then read to the jury as follows:

Deed of Carondelet to the U. States.

Know all men by these presents, that the city of Carondelet, pursuant to an ordinance of said city, entitled an ordinance to convey the Jefferson Barracks tract to the United States, approved June 27th, 1854, in consideration of the sum of five dollars to said city, in hand paid, has granted, remised, released, and forever quit-claimed, and does by these presents grant, remise, release, and forever quit-claim, and the undersigned, John Fester, as mayor of said city, hereby conveys unto the United States of America a certain tract of land lying in the county of St. Louis, State of Missouri, within the common of said city of Carondelet, south of the river des Peres, and known and designated on the plat of survey of said common as the Jefferson Barracks tract, which is bounded as follows, and contains seventeen hundred and two acres, more or less, to wit: on the north by a tract of land confirmed to Julien Chouquette; on the east by the Mississippi river; on the south by lots in the subdivision of the said common by Jasper Meyer, numbered one hundred and seventy-nine (179), one hundred and eighty (180), one hundred and sixty-one (161), one hundred and sixty-two (162), one hundred and sixty-nine (169), one hundred and seventy (170), one hundred and seventy-one (171); and on the west by lots of same subdivision, survey numbered one hundred and twenty-four (124), one hundred and twenty-five (125), one hundred and thirty-three (133), one hundred and thirty-four (134), one hundred and thirty-five (135), one hundred and thirty-six (136), one hundred and thirty-seven (137), one hundred and thirty-eight (138), and one hundred and seventy-eight (178): to have and to hold the same to the United States of America forever.

In testimony whereof, under the provisions of said ordinance, the mayor of said city has hereto signed his name, and the register of said city has attested the same, under the corporate seal of said city, this 25th day of October, A. D. 1854.

[SEAL.]

JOHN FESTER, *Mayor.*

Attest: BERNARD POEPPING,
Register.

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that on this 25th day October, A. D. 1854, appeared before me John Fester, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as a party thereto, and acknowledged the same to be his act and deed of the city of Carondelet for the purposes therein mentioned.

Taken and certified the day and year aforesaid.

AUGUSTE GAMACHE,
Justice of the Peace.

STATE OF MISSOURI,
County of St. Louis, ss.

I, the undersigned, clerk of the St. Louis county court, certify that Auguste Gamache, esq., whose name is subscribed to the preceding certificate, was, on the day of the date thereof, a justice of the peace in and for said county, duly commissioned and sworn.

[SEAL.] Given under my hand and seal of said court at office in St. Louis, the 25th day of October, A. D. 1854.

J. THORNBURGH, *Clerk.*

Filed and recorded Dec'r 9th, 1854.

C. KEEMLE, *Recorder.*

STATE OF MISSOURI,
County of St. Louis, ss.

I, the undersigned, recorder for said county, certify the foregoing to be a true copy of an instrument of writing from Carondelet to United States, together with the certificate of acknowledgment, and of the county court, and of the date of filing and recording thereof, as fully as the same remains of record in my office, in book 160, page 130.

[SEAL.] Witness my hand and official seal, this 23d day of February, 1858.

C. KEEMLE, *Recorder.*
Pr. J. CONRAD, *D'y.*

Ord. of Carondelet, No. 53, Jan. 24, 1854.

Ordinance of Carondelet, of 24th January, 1852, No. 53, read by defendants to the jury, as follows:

No. 53.—An ordinance supplementary to an ordinance entitled "An ordinance to convey certain lands in the common of Carondelet to the United States," approved Dec. 27th, 1851.

Be it ordained by the city council of the city of Carondelet, as follows:

Sec. 1. The deed intended to be made to the United States by the provisions of ordinance No. 50, entitled "An ordinance to convey certain lands in the common of Carondelet to the United States," approved December 27th, 1851, shall be a quit-claim deed, containing a reversionary clause, as follows: that so long as the United States government shall use the said tract of land for military purposes, the title shall vest and remain in said government, but when it ceases to be used for the purpose aforesaid the title shall revert to the city of Carondelet.

Sec. 2. Any ordinance or parts of ordinance conflicting herewith is hereby repealed.

This ordinance shall take effect and be in force from and after its passage. Approved January 24th, 1852.

Peyton's White's Testimony.

Peyton White, being duly sworn, testified: I have lived in St. Louis since 1818. I have lived all over town mostly. 23 years ago I put up a fence on the grave-yard at corner of 15th street and Park avenue, in St. Louis. It had been used for burial purposes before then. I was not here when the lot was bought by my father. I can't tell how long ago it was that I put up the fence there.

Bill of Exceptions.

Plat of United States survey of Oct. 8th, 1855, of the commons of Carondelet, made in accordance with the out-boundary lines of Brown's survey, but excluding the Barracks tract, as surveyed in 28th March, 1855, offered in evidence by the defendant, to which the plaintiff objected that it does not appear to have been executed under instructions of the Commissioner of the General Land Office.

The court admits the same, and the plintiff excepted; the same was read to the jury, as follows:

[*For plat see original, page* 101.]

OFFICE OF THE SURVEYOR GENERAL FOR ILLINOIS AND MISSOURI,
St. Louis, October 8th, 1855.

The above plat of survey No. 3,102, in township 43 and 44 north of the base line, and range 6 and 7 east of the 5th principal meridian, of the tract of land confirmed to the inhabitants of the village of Carondelet, by the 1st section of the act of Congress approved the 13 June, 1812, entitled "An act making further provision for settling claims to land in the Territory of Missouri," and showing the connexion of that survey with the lines of the adjoining public and private surveys, is strictly conformable to the field-notes thereof on the file in this office, which have been examined and approved. It was originally executed about the year 1817, by Elias Rector, deputy surveyor, whose field-notes are not dated, and its lines were subsequently retraced between the 11th and 17 days

rch, 1834, by Joseph C. Brown, deputy surveyor, under instructions of the 10th of the same month, from Elias T. Lanham, surveyor of the public lands for the district of Illinois and Missouri. The said surveys as retraced by the said Brown was sanctioned by the decision of the Hon. A. McClelland, Secretary of the Interior, dated 23d of February, 1855, which decision was transmitted to this office for its information and government; and pursuant to said decision, there is hereby made a distinct and unqualified exclusion from the survey No. 3,102, of survey No. 3,341, executed to the amount of 1,702.04 acres, (as shown by the field-notes furnished this office on the 28th March, 1855, by the Commissioner of the General Land Office,) on the third December, 1840, by Geo. W. Waters, under directions from the War Department, of the military reserve at Jefferson Barracks, as the absolute property of the United States, set apart for their own special use, and in exclusion from any lands for the disposal of the public *dominion;* and in further pursuance of said decision, it is hereby declared, that as regards the rights of all other demands within the limits of said survey No. 3,102, who adversely to Carondelet, this approved plat is in no manner intended, nor shall it be construed to interfere with the rights of such adverse claimants to seek a judicial settlement of their several interests.

(Signed) JNO. LOUGHBOROUGH,
Surveyor General.

OFFICE OF THE SURVEYOR GENERAL FOR ILLINOIS AND MISSOURI,
St. Louis, 15 *October,* 1857.

The foregoing plat and certificate of approval of survey No. 3,102, of the common of Carondelet, are correctly copied from the original plat on file in this office.

Surveyor General.

Plaintiff, in rebuttal, read in evidence to the jury the following proceedings, documents and papers, to each and every of which the defendant objected, as irrelevant and incompetent; but the court admitted them to be read, and the defendant then and there excepted.

The said proceedings, documents and papers were as follows:

1. Copy of the act of incorporation of St. Louis, of 1809.

Act of Incorporation of St. Louis, 1809.

In the Court of Common Pleas, November Term, 1809.—November 9th, 1809.

On petition of sundry inhabitants of the town of St. Louis, praying so much of said town as is included in the following limits be incorporated, to wit: beginning at Antoine Roy's mill, on the

bank of the Mississippi; thence running sixty arpens west; thence south, on said line of sixty arpens, in the rear, until the same comes to the Barrier Denoyer; thence due south until it comes to the Sugar Loaf; thence due east to the Mississippi; from thence, by the Mississippi, to the place first mentioned. The court having examined the said petition, and finding that the same is signed by two-thirds of the taxable inhabitants residing in said town, order the same to be incorporated and the metes and bounds to be surveyed and marked, and a plat thereof filed of record in the clerk's office; and David Delanny and William C. Carr are appointed commissioners to superintend the first election of five trustees, in pursuance of the law.

STATE OF MISSOURI,
County of St. Louis, ss.

I, William J. Hammond, clerk of the circuit court within and for the county aforesaid, certify the foregoing to be a true and correct copy of the incorporation of the town of St. Louis, by the court of common pleas, in the year 1809, as fully as the same remains of record in my office.

In testimony whereof I hereto set my hand and affix
[SEAL.] the seal of said court, at office, in the city of St. Louis, this 13th May, 1856.

WM. J. HAMMOND, *Clerk.*

2. Instructions of surveyor general to Joseph C. Brown to survey commons of St. Louis, of 1832.

Instr'ts of Sur. Gen'l to Survey Com's of St. Louis, Nov. 1832.

SURVEYOR'S OFFICE, SAINT LOUIS,
Nov., 1832.

SIR: You are hereby authorized to survey and to connect with the lines of the adjoining public and private surveys the land claimed by the inhabitants of St. Louis, as commons.

In executing the above mentioned survey, you will consider the persons who may be appointed for that purpose by the corporate authorities of the city of St. Louis, as the proper agents of the inhabitants thereof, and you will notify the inhabitants of the village of Carondelet at what time you will survey the line between the St. Louis and Carondelet commons, as they are equally concerned with the people of St. Louis, in the establishment thereof.

You will survey the commons of St. Louis, as nearly in conformity with the enclosed copy of a former survey thereof (marked No. 1) as may be practicable; beginning at the point marked A, thereof, in the southern line of A. Chouteau's mill tract, eleven arpens eastwardly from his corner, numbered five on the plat herewith furnished you, (marked No. 2,) where you will establish a permanent corner; thence run the course and distance marked on

plat No. 1, to intersect the Mississippi river at B, a point twenty arpens below the most western corner of the claim or survey in the name of Susan Dubreuil, where you will set a temporary post on the river; thence down the river the other two courses and distances marked on plat No. 1, to the point C., as represented thereon, where you will also set a temporary post.

You will then return to the point A. in the southern boundary line of A. Chouteau's mill tract (being your beginning corner) and run thence westwardly and northwardly, with two of his lines, to the point marked I, on said plat No. 1; thence again westwardly, with another of his lines, sixty arpens, towards the point marked H, on said plat No. 1; thence from the termination of said sixty arpens, you will run and correct a line to the point marked G, on said plat No. 1, at which point by the eastern line of the prairie des Noyers common-field lots intersects the projection in the survey of Charles Sanguinette, as represented on plat No. 2; thence eastwardly, southwardly and westwardly, with the lines of said projection, to the point marked F, on said plat No. 1; thence with the eastern line of the claims or surveys of said Charles Sanguinette and others, to the point marked E, on said plat No. 1, being the southeast corner of the survey of Charles Sanguinette, under J. B. Tisson; thence from said point E, run the other two courses and distances marked on the western boundary of said plat No. 1, to point D, where set a temporary post.

You will then ascertain the southing of the eastern and western boundary lines of your survey—that is to say, the southing of the points C and D; and in case an east and west line will not connect said points, you will take half the difference of their southing, move your temporary posts, north or south, as the case may require, and connect said points C and D, as thus changed, by an east and west line; thence, from the point C, on the Mississippi river, you will run up, and with the river, to or near the point B, and correct the line; thence to A, the beginning.

You will establish a permanent corner at each angle of the commons; and in connecting your survey thereof with the lines of the adjoining public and private surveys with which you may intersect, you will, in all cases, measure to the nearest corner on the line so intersected, outside of the commons; and in running lines which bind on other surveys, you will call for, running therewith, in your field-notes.

I am, sir, very respectfully, your obd't servant,

(Signed) E. T. LANGHAM.

JOS. C. BROWN, Esq.,
Deputy Surveyor.

[REC. CCLIX, D. T., 1859.]—15

OFFICE OF THE SURVEYOR GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, Nov. 21st, 1854.

I certify that the foregoing is correctly transcribed from the original instructions on file in this office.

JNO. LOUGHBOROUGH,
Surveyor General.

3. Report of L. Fassen, protesting against survey of St. Louis commons, of 13th May, 1833.

Report of L. Fassen, protest'g ag'st Sur. of St. Louis Commons.

(Copy.)—Report of L. Fassen to the Board of Trustees, dated May 13th, 1833.

The eighth instant, having been required by Mr. Eugêne Leitensdorfer, chairman of the board of trustees, to go and observe the line of separation between the commons of St. Louis and Carondelet, I repaired to the dwelling of Mr. St. Amand Micheau, where Mr. Brown, deputy surveyor, was waiting for me, to begin his operations. I asked him whereabouts he was going to take his point of departure. He answered me that his line was to pass one arpent nearly, lower down than the house of Mr. Micheau. Thereupon I objected to him, that he knew very well that our limit or land mark was the Sugar Loaf hillock; that he had himself run that line some years previous in surveying our commons,* and he acknowledged it, but he told me that he had received his instructions and was obliged to follow them. I replied to him that if his principal had given him an order to draw the line through the middle of the village, he ought certainly to obey; but that, for my part, I was not obliged to witness so unjust a proceeding. Whereupon I came away, and his surveying took place in my absence. Mr. St. Amand Michau was present at our meeting, and is witness to the authenticity of my report.

(Signed) LOUIS FASSEN.

Carondelet, May 13th, 1833.

*On the 27th and 28th of March, &c., 1821, under Mr. Rector, surveyor general at that time.

I certify that the above is substantially correct and true, being present at the time.

(Signed) ST. AMAND MICHEAU.

Mr. ELIAS LANGHAM:

SIR: I am instructed by the board of trustees of the town of Carondelet to forward the within report to you.

Yours, &c.,

(Signed) JACOB R. STINE, *Reg'r.*

E. LANGHAM,
Surveyor General, city of St. Louis.

OFFICE OF THE SURVEYOR GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, 21*st Nov.*, 1854.

I certify that the above is correctly transcribed from a document on file in this office.

JNO. LOUGHBOROUGH,
Surveyor General.

Res'lt'n of Bd. of Trust. of Car., adopt. Rep't of Fassen.

4th. Resolutions of board of trustees of Carondelet, of 22d July, 1833, adopting said report of Fassen.

July 22d, 1833.

The board met pursuant to adjournment: Present, Messrs. Leitensdorfer, Lefavre, Colburn, *Fassean* and Chattillion.

The board being called to order, leave being asked and granted, the following report was read:

Report of Mr. Louis Fassen to the Board of Trustees, dated May 13th, 1833.

The eighth instant, having been required by Mr. Eugêne Leitensdorfer, chairman of the board of trustees, to go and observe the line of separation between the commons of St. Louis and Carondelet, I repaired to the dwelling of Mr. St. Amand Micheau, where Mr. Brown, deputy surveyor, was waiting for me, to begin his operations.

I asked him whereabouts he was going to take his point of departure. He answered me that his line was to pass one arpent nearly, lower down than the house of Mr. Michau. Whereupon I objected to him, that he knew very well that our limit or landmark was the Sugar Loaf hillock; that he had himself run that line some years previous, in surveying our commons,* and he acknowledged it, but he told me that he had received his instructions and was obliged to follow them. I replied to him if his principal had given him an order to draw the line through the middle of the village, he ought certainly to obey; but that, for my part, I was not obliged to witness so unjust a proceeding. Whereupon I came away, and his surveying took place in my absence. Mr. St. Amant Micheau was present at our meeting, and is witness of the authenticity of my report.

(Signed) LOUIS FASSEN.

Carondelet, May 13th, 1833.

*On the 27th and 28th of March, &c., 1821, under Mr. Rector, surveyor general at that time.

I certify that the above is substantially correct and true, being present at the time.

(Signed) ST. AMAND MICHEAU.

On motion of Mr. Lefavre, it was ordered that said report be recorded on our minutes, and that it be filed; as also, a copy of said report be sent to A. L. Langham, surveyor general, in St. Louis.

STATE OF MISSOURI,
County of St. Louis, ss.

I, Bernard Poepping, register of the city of Carondelet, do certify, that the foregoing extract from the proceedings of the board of trustees of the town of Carondelet is truly and correctly copied from the journal of the proceedings of said board, as fully as the same remains of record in my office.

In testimony whereof, I have hereto set my hand and affixed the seal of said city, this ninth day of January, eighteen hundred and fifty-four. [SEAL.]

BERNARD POEPPING,
Register.

5. Resolutions of trustees of Carondelet of the 15th of Sept., 1834.

Reslt'n of Trust's of Car., 15 *Sept.*, 1834.

Amongst the proceedings of the board of trustees of the town of Carondelet, at a meeting held on the 15th day of September, 1834, the following proceedings were had, to wit:

(No. one.) "On motion of Mr. Chartrand, it was ordered that Mr. Leitensdorfer proceed to obtain information from Peter Chouteau and others, respecting the landmarks and rights to the commons belonging to the town of Carondelet, and report thereon."

6th. Resolution of same of 6th October, 1834.

Res. of same, 6th Oct., 1834.

At a meeting of said board, held on the 6th day of October, 1834, there were present all members, and amongst other proceedings the following were had, to wit:

(No. two.) "On motion of Leintensdorfer, it was ordered, the chairman appoint two persons to obtain perpetual testimony to claim on the northern boundary of the commons belonging to this town.

"The chairman appoints Mr. Leitensdorfer, with instructions to the register for his assistance."

7th. Resolution of board of aldermen of St. Louis of 7th March, 1836.

Res. of Board of Ald'n of St. Louis, 7 *Mar.*, 1836.

Extract from the Journals of the Board of Aldermen of the city of St. Louis, Monday, March 7, 1836. (In the Board of Aldermen.)

Mr. Primm laid before the board a paper purporting to be a

report, signed Ls. Fassen, under date May 13th, 1833, to the authorities of Carondelet, objecting to the survey of the southern line of the St. Louis common as run by Joseph C. Brown in the year 1833; and also the affidavit of Pierre Chouteau under date March 7th, 1835, relative to said line; which were read and referred to the committee on the common, with instructions to suspend the sales of the common south of a line drawn east and west from "Le pain de Sucre," (Sugar Loaf Mound,) on the Mississippi river, to the common-fields of Carondelet, until the claim of Carondelet to that part of the St. Louis common has been investigated. (Vol. II, page 173.)

In St. Louis, November 23, 1853.

I hereby certify that the foregoing is a correct copy from the journals of the board of aldermen of the city of St. Louis.

L. DEGENHART,
Clerk of the Board of Aldermen.

8th. Resolution of board of aldermen of St. Louis of 9th March, 1836.

Res. of same, 9th March, 1836.

Extract from the Journals of the Board of Aldermen of the city of St. Louis, Wednesday, March 9th, 1836. (In the Board of Aldermen.)

The committee on the common made a report, dated this day, on the report of Ls. Fassen, read at the last meeting, and recommended the adoption of the following, which was adopted, to wit:

Resolved, That the committee on common be instructed to proceed to sell all the land lying within the survey of the common of this city, which have been heretofore offered for sale within said survey, and advertised for the present sale. (Vol. II, page 176.)

St. Louis, Nov. 23d, 1854.

I hereby certify that the foregoing is a correct copy from the journals of the board of aldermen of the city of St. Louis.

L. DEGENHARD,
Clerk of the Board of Aldermen.

9. Resolution of board of trustees of Carondelet of 21st May, 1836.

Res. of Trus. of Car., 21st May, 1836.

At a meeting of said board, held on the 21st of May, 1836, the following proceedings, amongst others, were had, to wit:

(No. three.) "The board rejoined at 2 o'clock same day, according to adjournment. Messrs. P. D. Barada, St. Amant Micheau, and George Bran; some persons yet absent. After which the committee on commons reported, and also gave lecture of their proposals

to the mayor and aldermen of St. Louis; which lecture was left for a second reading."

10th. Resolution of same of 28th May, 1836.

Res. of same, 28th May, 1836.

At a meeting of said board, held on the 28th of May, 1836, were present Messrs. Peter D. Barada, St. Amand Micheau, John E. Leitensdorfer, and George Bran; and amongst others the following proceedings were had, to wit:

(No. four.) "The committee on the commons, after some discussion of the board, made their return for the second time of the proposals made by them to the mayor and aldermen of St. Louis, by reading them, which proposals were unanimously approved by the board."

11th. Resolution of same of 4th June, 1836.

Res. of same, 4th June, 1836.

At a meeting of said board, held on the 4th of June, 1836, were present Messrs. Leitensdorfer, Bran, and Micheau; and among other proceedings the following were had, to wit:

(No. five.) "The chairman being absent, John Eugene Leitensdorfer was called to the chair; after which, George Brun and St. Amand Michau made the return of the refusal and objection of the board of St. Louis in regard to the north part of the commons of Carondelet, which said board of St. Louis sold as theirs."

12th. Resolution of same of 11th July, 1836.

Res. of same, 11th July, 1836.

At a meeting of said board, held on the 11th of July, 1836, were present Messrs. Leitensdorfer, Delisle, and Bran; absent, Messrs. Barada and Michau; and among other proceedings the following were had, to wit:

(No. six.) "Mr. Bran made his report on the meeting held by the inhabitants of Carondelet, and on the rights and authorities granted by them to the board of trustees in regard to the northern part of their commons in contest with the inhabitants of St. Louis, in obedience of which rights and authorities, on motion of G. Bran, the board unanimously resolved, that they should be transferred to the committee on the commons."

13th. Resolution of same of 16th July, 1836.

Res. of same, 16th July, 1836.

(No. seven.) Carondelet, Saturday, July, 16th, 1836.

"On this day, pursuant to adjournment, the board met.

Present, Messrs. Brun, Barada, and St. Amant Micheau; Messrs. Delisle and Eugene were *were* absent.

The board being called to order, the committee made the return

concerning the commission on the northern part of their commons, as follows, to wit: Having met at the place appointed by the board of St. Louis, to settle the difficulties on said part of the commons, the board of St. Louis could not form a quorum, and therefore requested said committee to return on Monday next."

14. Resolution of same, of 4th February, 1837.

Res. of same, 4th Feb., 1837.

(No. eight.) "Saturday, February 4th, 1837.

The board met pursuant to adjournment.

Present, Messrs. St. Amant Michau, George Brun, and John B. Shoults. Messrs. Peter D. Barada and Peter J. Shoults were absent. The chairman being absent, John B. Shoults was called to the chair. The board being called to order, Mr. Brun read a public notice printed in the *N. Ws.* paper, by order of the mayor and aldermen of the city of St. Louis, in regard to claimants, in order to the lands lying within the survey of the commons of St. Louis, surveyed by James Mackey, and dated January 30th, 1837; after which he made a motion for a public notice in some newspaper should be ordered and given immediately, in answer to the said notice of said mayor and aldermen of St. Louis, in order to protest against it; which motion was unanimously approved and resolved, and said George Brun, committee on the commons of Carondelet, was appointed and charged with the having it printed."

15. Resolution of same of 2d and 4th of March, 1837, and 18th March, 1837.

Res. of same, 4th March, 1837.

At a meeting of said board on the 4th day of March, 1837, were present Messrs. Barada, John B. Shoults, Peter J. Shoults, and Brun; absent, Mr. St. Amand. Amongst other proceedings the following were had, to wit:

(No. nine.) "A letter dated March 2d, 1837, from Thornton Grimsley, chairman of the commissioners on the commons of St. Louis, was presented to the board by George Brun, and read by the register. Said letter was an answer to that of George Brun, deputed by the board of Carondelet, to protest against several certain notices given by said board of St. Louis, as entered on the present book of M, of the present board, at our last meeting."

Res. of same, 18th March, 1837.

The board met pursuant to adjourment, on this 18th day of March, Saturday, 1837: Present, Messrs. John B. Shoults, Peter J. Shoults, George Brun, and Peter D. Barada; (St. Amant Michau, absent.)

The board being called to order, on motion of Peter J. Shoults, Louis Guion, Francis H. Lefavre, and Antoine Barada were ap-

pointed judges of election to take place on the first Monday in April next, and the register ordered to give them a due notice of the same. A letter from General Ashley, in regard to the petition presented or intrusted to him concerning the commons of Carondelet, was presented, and the register required to read the same; after which reading, the said letter was ordered to be filed.

The board not seeing cause to proceed on to any business this day, on motion of John B. Shoults, adjourned.

16th. Letter of Thornton Grimsley to the president and board of trustees of Carondelet, of 2d March, 1837.

Letter of Th. Grimsley to Pres. and Bd. of Trust. of Carondelet.

ST. LOUIS, 2*d March*, 1837.

To the President and Board of Trustees of the town of Carondelet:

GENT.: The board of aldermen of this city has instructed me to address you on the subject of your protest against further sales of the commons of this city, south of certain boundaries therein specified. The board highly appreciate the friendly feelings set forth in the protest above mentioned, and assure the president and trustees of Carondelet, that if they could believe there existed any matter of controversy between the two towns, they would gladly embrace the proffered opportunity to have it amicably settled. But believing there is no cause of difference, and knowing each town has their respective quantity of land in these official surveys of commons, they respectively refer your honorable body to the office of the surveyor general for further information.

I have the honor to be, gent., yours *cincereli*,

THORNTON GRIMSLEY,
Chairman of Com. on Commons.

To the President and Board of Trustees of Corondelet.

[SEAL.] Attest: BERNARD POEPPING,
Register.

17th. Letter from Genl. Ashley, referred to in resolution of board of trustees of Carondelet, of 25th May, 1837.

(The letter of General Ashley cannot be found.)

18th. Resolution of board of trustees of Carondelet, of 9th of November, 1837.

Res. of Bd. of Trust. of Car., Nov. 9th, 1837.

At a meeting of said board of trustees held on the 9th of November, 1837, were present all members, and amongst other proceedings the following were had, to wit:

(No. twelve.) "Mr. Michau makes a motion for the appointment of a commissary, in order to employ a surveyor to survey the commons, upon which the chairman nominated Louis Fassen to said commission."

19th. Resolution of same of 23d November, 1837.

Res. of same, Nov'r 23d, 1837.

At a meeting of said board, held on the 23d day of November, 1837, were present all members; and among other proceedings the following were had, to wit:

(No. thirteen.) "Mr. Fassen makes return of a commission to which he was appointed on the 9th, as follows: He contracted with a surveyor (Mr. Rene Paul) to survey the commons for $7 00 per day and board; and furnishes him, moreover, with 5 men during the time of the survey."

20th. Resolution of same of 21st of February, 1838.

Res. of same, Feb. 21st, 1838.

At a meeting of said board of trustees, held on the 21st day of February, 1838, there was present Messrs. Paupe, Fassen, St. Amant Micheau, and Barada; and amongst other proceedings the following were had, to wit:

(No. eleven.) "On motion of L. Fassen, it was resolved that William Warrens be prosecuted before the circuit court for building on the commons, and that a committee be appointed to make proper arrangements with a lawyer to prosecute said suit, upon which the chairman nominated L. Fassen and J. Barada to that effect."

21st. Letter from Thomas B. Hudson of July 1st, 1838 or 1837, and statement of facts signed by him and admitted.

Letter from T. B. Hudson.

SAINT LOUIS, *July 1st*, 1837.

To the Hon. the Board of Trustees for the town of Carondelet:

GENTLEMEN: Having been informed by my friends that certain individuals concerned in the St. Louis common had expressed their opinion relative to propriety of my acting as attorney for the trustees of Carondelet and at the same time as a member of the board of aldermen for the city of St. Louis, soposing, I have no doubt, that my duties would conflict with each other, I confess that I have no such belief; nor do I think it in the slightest degree improper for me to act in both capacities, as in all instances where the city of St. Louis is a party, each citizen of *of* the city is also a party to the suit, and the same is conducted under the name of the "Mayor, Aldermen, and Citizens of the city of St. Louis;" hence if this doctrine be correct, all citizens of St. Louis must be precluded from acting as counsel for the trustees of Carondelet when the cor-

porations are parties litigant, which, in my opinion, is absurd and ridicalous.

I have come to the conclusion to resign the office I had the honor to receive at your hands, in order to avoid any censure from my constituents, or being accused of acting dishonorably in any respect.

I herewith tender my resignation, and regret exceedingly that I cannot consistently with my feelings, after hearing such reports, longer continue to act as your attorney. I also tender my most unfained thanks to you individually and as a body, and assure you that your kindness towards me will ever be remembered with sentiments of lasting gratitude, respect, and esteem.

I have the honor, gentlemen, to be, with much respect, your most obedient and humble servant,

THOS. B. HUDSON.

Attest:

[SEAL.] BERNARD POEPPING, *Register.*

Hudson's Statement.

In the year 1836 or 1837, I was notified by the board of trustees of Carondelet that I had been elected by the board attorney for the corporation of Carondelet, which I never accepted, according to the best of my recollection. I remember that very soon after I received notice of my election, I notified the board that I could not discharge the duties of att'y for the corporation, and requested them to employ some other attorney. I never met the board since, to my recollection, had any official business with the trustees of Carondelet. One of the members of the board of trustees with whom I was well acquainted often spoke to me in reference to some claims that Carondelet had to commons or lands in St. Louis county, but where they were located, or the extent of the claim, I have no recollection.

THOS. B. HUDSON.

22d. Resolution of board of trustees of Carondelet of the 1st of Sept., 1838.

Res. of Trus. of Car., Sept. 1st, 1838.

At a meeting of said board of trustees, held on the 1st day of September, 1838, were present Messrs. Paupe, Leitensdorfer, P. D. Barada and J. Barada; and among other proceedings, the following were had, to wit:

(No. fourteen.) "On motion, Mr. A. Paupe and L. Fassen were nominated commissioners to search the records concerning the north line of the Carondelet commons."

STATE OF MISSOURI,
County of St. Louis, ss.

I, Bernard Poepping, register of the city of Carondelet, do certify that the foregoing abstracts of the proceedings of the board of trustees of the town of Carondelet, numbered and marked in red ink from one to fifteen inclusive, and enclosed in quotation marks, are true and correct copies of said entries, as fully as the same appears of record in my office, on the journal of the proceedings of said board, under the respective dates before stated.

In testimony whereof, I have hereunto set my hand and affixed the seal of said city, at office, this ninth day of July, A. D. 1855.

[SEAL.]

BERNARD POEPPING, *Register.*

Bill of Exceptions.

Plaintiff then offered in evidence an ordinance and resolution of the council of the city of Carondelet, of the 31st of December, 1857, as follows:

Ord. or Resol. of Car., Dec. 31st, 1837.

Be it resolved by the city council of the city of Carondelet, That whereas the town or village of Carondelet used as commons belonging to said village in Spanish times, before 1803, and until 1836, all the land north of the village up to the Sugar Loaf mound on the Mississippi river, and to a line running from the said Sugar Loaf mound to the northeast corner of the common-fields of Carondelet, as surveyed by Joseph C. Brown in 1834: and whereas a survey for the St. Louis commons was made in 1831 and 1832, which interfered with and covered a part of the commons of Carondelet, and against which survey the board of trustees of Carondelet filed a protest in the surveyor general's office in 1833: and whereas, in 1834, Joseph C. Brown made a survey of the commons of Carondelet, and run the line on the north from the Sugar Loaf mound to the common-field lot of one Eugé, or near thereto: and whereas said Brown failed to return any plat of survey of said line with the survey of said commons, but, as has been since discovered by the inhabitants of Carondelet, returned another line for the survey of the north line of their commons, and suppressed the true line he had run for the said inhabitants: and whereas, at the time said survey of Brown, 1834, was made, the village of Carondelet had a tenant on the land north of the north line of the survey as platted by said Brown, as the north line of the commons, at the request of the said inhabitants: and whereas the said survey of Brown was not returned to the Commissioner of the General Land Office until the 18th of May, 1839, and was disapproved by said Commissioner on the 24th of September, 1839:

And whereas the village of Carondelet has always claimed

commons up to the said line from the Sugar Loaf mound to the northeast corner of the common-fields of Carondelet, and has always, ever since the said survey of Brown of 1834, protested against the enroachments and pretensions of St. Louis, and Wm. M. McPherson, and all other persons, upon the land lying south of the said Sugar Loaf, and east of the common-fields: and whereas divers decisions as to Brown's survey of the commons of Carondelet have been made by the United States officers in 1839, 1853, and 1855: and whereas the village and city of Carondelet have made attempts, by protest and by appeal, to have the true north line of Brown's survey of the north line of the commons platted and returned, as it ought long since to have been done; and whereas a decision was lately made in 1855, as to the validity of Brown's survey, by the Secretary of the Interior at Washington:

Now, therefore, be it resolved, that the city of Carondelet does claim all the land lying north of the north line of Brown's survey of 1834, as platted by Brown, up to the Sugar Loaf line to be run from said Sugar Loaf mound to the northeast corner of the common-field of Carondelet, as commons belonging to the village, now city, of Carondelet, and confirmed to the inhabitants of said village by the act of Congress of the 13th of June, 1812, and the land included within Brown's survey of 1834, south of the village and common-field of Carondelet, we, the said city council of the city of Carondelet, for and in the name of said city, do hereby accept as included within the commons of Carondelet, as known and recognised in Spanish times, and confirmed by the same act of Congress; and as to the platted line of Brown's survey of 1834, on the north of the village, now city, of Carondelet, stopping, as it does, short of the true line of the commons on the north, we do hereby, as has been often done before, protest that it shall in no wise affect the title to the land actually embraced within the commons of the village, now city, of Carondelet, north of the said village.

Approved December 31st, 1857.

MADISON MILLER, *Mayor.*

STATE OF MISSOURI,
County of St. Louis, ss.

I, Bernard Poepping, register of the city of Carondelet, do hereby certify, that the foregoing is a true and correct copy of a preamble and resolution passed by the city council of the city of Carondelet, on the thirty-first day of December, eighteen hundred and fifty-seven, and approved on the same day, as fully as the same remains of record on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said city at office, this second day of January, A. D. 1858.

[L. S.]

BERNARD POEPPING, *Register.*

Bill of Exceptions.

To the admission of which in evidence the defendant then and there objected and excepted.

The plaintiff thereupon offered to prove that the said resolution was filed in the office of the surveyor general of Illinois and Missouri at St. Louis, on the 8th day of January, 1858, and again offered said ordinance or resolution of the 31st December, 1857; but the court excluded the same for any purpose, and the plaintiff then and there excepted.

The plaintiff then read in evidence to the court the following proceedings, documents and papers, to each and every of which the defendant then and there objected as incompetent and irrelevant; but the court admitted the same to be read, and defendant then and there excepted.

The said proceedings, documents and papers were thereupon read as follows:

Letter from Sur. Gen. Milburn to U. S. Attorney of Mo.

SURVEYOR'S OFFICE,
St. Louis, 18th of May, 1839.

SIR: In compliance with your letter of the 16th inst., I enclose herewith a plat, marked A, of the survey of the common of Carondelet, and a copy of the notes, marked B, of a Spanish survey of a boundary line thereof, from the S. W. corner of the common-field to the river des Peres; these papers, together with the several acts of Congress on the subject, and a copy from pages 195 and 196 of book D, in the office of the recorder of land titles, to which you are referred, contains all the evidence in this office pertaining to the subject.

I am, respectfully, sir, your obedient servant,
(Signed) WILLIAM MILBURN,
Surveyor General.

ARTHUR L. MAGENIS,
U. S. Attorney for the District of Missouri.

Letter from Sur. Gen. Milburn to Brig. Gen. Atkinson, U. S. Army.

SURVEYOR GENERAL'S OFFICE,
St. Louis, 1st of August, 1839.

SIR: Your letter of the 2d of July, asking for information relative to the Carondelet common, was duly received, and would have been forthwith replied to, but that the pressing duties and engagements of this office put it altogether out of my power. I hope, however, that no material inconvenience will result from the delay.

The "claim" of the inhabitants of Carondelet to common will be found in the enclosed copy, marked A, of their notice to the U.

S. commissioners, dated 7th of June, 1808, as certified to this office by the recorder of land titles on the 24th of April, 1829. The same marked B, with that part which is in the French language, translated by Adolphe Renard, professor of the French and Spanish languages, and translator for this office, is also enclosed.

For the confirmation of this claim to common, I must refer you to the first section of the act of Congress of the 13th of June, 1812, entitled "An act making further provision for settling the claims to land in the Territory of Missouri;" and for the final and full relinquishment of all the right, title, and interest of the United States, you are referred to the act of Congress of the 27th of January, 1831, entitled "An act further supplemental to an act entled 'An act making further provision for settling the claims to land in the Territory of Missouri, passed the 13th of June, one thousand eight hundred and twelve.'"

A plat marked C of the approved survey of said common, and showing the surveys of six confirmed claims within the limits thereof, is also enclosed.

The notes of the survey of a line from the common-field land to the river des Peres, which forms a part of the notice of claim to the commissioners, are on record in the Spanish "registre d'arpentage" in this office.

I am, sir, very respectfully,
Your obed't servant,
(Signed) WILLIAM MILBURN,
Surveyor General.

Brigadier General ATKINSON,
U. States Army.

B.—(Referred to in the foregoing letter.)

"A, No. 11."

To the Recorder of land claims for the Territory of Louisiana:

Take notice, that we, the inhabitants and settlers of the village of Vide Poche, in the district of St. Louis, claim title to 6,000 arpens of land, situate adjoining said village, by virtue of a concession from Dn. Zenon Trudeau, lieut. governor of Upper Louisiana, dated the 7th of December, 1706, on the part of said inhabitants.

St. Louis, June 7th, 1808.

BTE. LAJOYE FILS.
LOUIS $\overset{\text{sa}}{\underset{\text{marque.}}{\bowtie}}$ MENARD.

"A, No. 12."

To Don Zenon Trudeau, Captain of the Stationary Regiment of Louisiana, Lieutenant Governor and Commander-in-Chief of the western part of Illinois:

The deplorable condition in which the village of Carondelet is

about to fall, now and hereafter, because of the exportation of wood, (here the text is deficient,) the honor to state, that after the petition he handed to you on the 5th of October last, for the purpose of obtaining the continuation of their land, you told them, that although you could not acede to his demand, you would, however, make your efforts to give him forty arpents above their park. The village prays you to be willing to turn your attention to the fact that he has at present a great inducement to work, on account of this mill, and that it is his intention to sow with grain as much land as he is able to do: Therefore, this petition is given in charge to Mr. Gamache, to be delivered to you, and he hopes you will be pleased to take into your consideration his demand, and the misery which threatens him, and grant to him a continuation of the lands (common-fields,) taking for his limits the limit of Mr. Constant; thence to the Mississippi and the river des Peres, for limits, owing to the same village of Carondelet.

He expects everything from your goodness, and he believes you will accord his demand. He shall never cease to be thankful to you.

At the village of Carondelet, the 6th of Dec'r, 1796.

his
JOHN B. ⋈ GAMACHE.
mark.

The land which is asked for is included in the tract that was reserved to furnish the wood necessary for the uses of the village of Carondelet; and the demand made by Mr. Gamache cannot be accorded, as it is for all the concessions granted in the direction of the line taken at the end of the lands of the said village, and running parallel to the Mississippi, 150 arpens lower.

St. Louis, 7th of Dec'r, 1796.

ZENON TRUDEAU.

"A, No. 13."

Upper Louisiana, village of Carondelet, district of St. Louis of Illinois.—L. B. No. 139, Fo. 27.

We, the undersigned, a surveyor, commissioned by the government to certify to all to whom it shall appertain, that on this day, 21st of Dec'r, in virtue of the order transmitted by the lieut. governor, Mr. De Treget, captain commandant of the said village, enjoining upon the inhabitants to make known the line of a tract of land which was conceded to them on the 7th of Dec'r, 1796, which line must be parallel with that of Messrs. Ante, Reilhe, and Alvarez, the said inhabitants, in presence of their commandant, have agreed upon causing their line to be drawn from the last bound placed at the extremity of the depth of their lands, which had been formerly surveyed by Mr. Pre. Chouteau, in virtue of an order from the lieutenant governor.

Having taken the bearing course of these same lands, I found that they ran S. 28° W. I followed this same course 23 arps. 3½ poles, at which distance I intersected the "River des Peres." The end of the line on the bank of the same river has been bounded with a stone, having for witness two flint stones and one flattened lead bullet. The land of Mr. Alvarez must be distant from the said stone found 24 feet, in following the same line parallel. And in order that the said inhabitants may prove the same, I have delivered these presents.

St. Louis of Illinois, the 25th of Dec'r, 1797.

ANTE. SOULARD.

I do certify, wherever it may be needful, that the inhabitants of the village of Carondelet have requested me to measure, or cause to be measured, by one of my deputies, in their behalf, a portion of land which was granted to them as a commons by the lieut. gov., Don Zenon Trudeau. This land was to be surveyed by Mr. Bartholomew Cousin, who transported himsef to the village of Carondelet for that purpose. But at the moment he would set his instrument he found it out of order, and of no use to him, an inconvenience which did prevent the said survey to be then made, and the short space of time that was left to attend to it again has hindered me from being able to satisfy to the calls made on me by the citizens of the settlement of Carondelet.

In faith whereof. I have delivered the presents to the interested, that they may serve the same wherever needed.

St. Louis, 18th February, 1806.

ANTOINE SOULARD,
Surveyor General Territory Louisiana.

Letter from Comm'r Whitcomb to Sur. Gen. Milburn.

"A, No. 16." GENERAL LAND OFFICE,
Sept. 24th, 1839.

A plat of survey, No. 3,102, certified by you on the 18th May last, of the common of Carondelet, as surveyed by Joseph C. Brown, deputy surveyor, in March, 1839, with your communication of that date to Arthur L. Magenis, esq., U. States district attorney, and a transcript from page 6 of register d'arpentage St. Louis, A, have been received at this office, with a letter of the 22d June last from the Secretary of War.

The subject is brought to the attention of this office by the Secretary of War, with a view, as appears from his communication, that this office should take measures to sell the land included within the lines marked with red on the accompanying plat, (the plat above referred to,) from the river des Peres south, claimed as common by the village of Carondelet, but believed to belong to the United States.

In that communication it is also stated that the military reservation desired for the U. States, round the fort at Jefferson barracks, will be designated whenever the land office is prepared to sell the residue of this tract of land.

On this subject I herewith enclose a copy of a report, No. 244, of the Solicitor of this office, in which you will perceive that he is of opinion that Brown's survey, within the limits of which are six private claims, "includes several thousand acres, to which the village of Carondelet has no legal or equitable title;" and "if such is the fact, there is no objection to a survey and sale, as public land, of all that part of the tract not needed for military purposes or covered by private claims; indeed that is the proper course to pursue;" that instructions should be given to the surveyor general to have the survey executed as required by law, (act of June 13th, 1812, page 216, part 1st, laws and instructions, &c., to which the acts, chap. 311 and 406, are supplementary,) viz: to retrace the exterior of the village, including the village lots, common-field and out-lots and commons, giving the villagers the same lines which they had in 1803, and after laying down the private claims to section , and subdivide the residue, and return the official plat, that the surveyor general should refer to the ancient maps and title-papers in his and the recorder's office, and from them ascertain what were the exterior lines, &c.

Concurring in the views of the Solicitor, as stated, I request you will make a thorough and careful examination into the whole matter, in order to determine the limits of the commons of Carondelet to which the villagers are legally entitled, and that you will cause a survey to be made accordingly, and that such lands as may not be found to be within the limits of the commons aforesaid, or covered by private claims, may be surveyed as public lands, and plats of the same duly returned.

You are requested to make a detailed report of all your proceedings, accompanied by copies of all the papers or records that you may be able to find, having a bearing on the claim in question, with a diagram exhibiting the limits of the commons according to the evidences of title.

Very respectfully, your obedient servant,

(Signed) JAS. WHITCOMB,
Commissioner.

WILLIAM MILBURN, Esq.,
Surveyor Gen'l St. Louis, Mo.

Letter from Solicitor Birchard to Comm'r Whitcomb.

"A. No. 17." GENERAL LAND OFFICE,
Solicitor's Bureau, August 6th, 1839.

SIR: In a letter of the 22d June, the Secretary at War requests

you to take measures to sell the land south of the river des Peres, claimed as commons by the village of Carondelet, but believed to belong to the United States.

Accompanying the reference there is also an opinion of the district attorney for Missouri, and sundry papers.

The act of June 13th, 1812, P. I., page 216, confirms the rights, titles and claims to town or village lots, out-lots, common-field lots and commons, in, adjoining and belonging to the village of Carondelet, which lots have been inhabited, cultivated or possessed prior to the 20th December, 1803, and makes it the duty of the deputy surveyor (when the same had not been already done) to survey the out-boundary of the village, so as to include the out-lots, common-field lots and commons thereto belonging, and to transmit a plat of the survey to the surveyor general to be forwarded to the General Land Office.

Two supplementary acts have been passed, (chap's 311 and 406;) but as they do not seem to touch the merits of the present inquiry, further reference is deemed necessary. The act of 1812 and the supplementary acts quoted, dispose of all the lands included within the exterior lines which the deputies were required to run, by the act of 1812. A copy of the plat of the commons of Carondelet, as surveyed by Brown, deputy surveyor, in March, 1834. under the instructions of the surveyor general of 10th February, 1834, authorizing him to re-trace the lines and re-establish the corners of the former survey thereof, *and* has been furnished by the surveyor general, which shows that Brown's survey extends south of the river des Peres, so as to enclose several thousand acres of land, and to include within the exteriors six private claims, three of which are confirmed by the act of 1836.

These concessions furnish evidence that the land in question was not regarded by the Spanish officers as parcel of the village common, because they were all forbidden to grant village commons; and the legal presumption is that they obeyed the instruction, and that, therefore, this land was not a common, but public domain. The title which the inhabitants have exhibited to the land south of the river des Peres is the statement of Governor Trudeau, dated Dec'r 7th, 1796, rejecting a petition of Gamache, praying for a grant of land below the village, which states "that no concession can be made in the direction of a line taken from the end of the field-lots of the village and running parallel with the Mississippi, and further down said river, one hundred and fifty arpens," because the same is within the limits of the land reserved for the purpose of furnishing wood for the village.

This was shown to the board of commissioners for adjusting titles, and accompanied with proof that the inhabitants cut wood below the village for many years, &c., (2d Am. State Papers, 549,) but the claim was rejected.

It appears from a transcript of a survey made Feb'y 25th, 1797, of a tract conceded to the inhabitants Sept. 7th, 1796, that the south line of the grant is bounded by the river des Peres. This survey being made subsequent to the rejection of Gamache's petition, if it be, as is supposed, a survey of the commons, will overrule any inference to be drawn from the expressions used by the governor in refusing the prayer of Gamache.

My belief is that Brown's survey includes several thousand acres to which the village of Carondelet has no legal or equitable title; and of the same opinion is the district attorney of Missouri.

If such is the fact there is no objection to a survey and sale, as public land, of all that part of the tract not needed for military purposes or covered by private claims. Indeed, that is the proper course to pursue.

I advise giving instructions to the surveyor general to have the survey executed as required by law, viz: to re-trace the exterior of the village, including the village lots, common-field and out-lots, and commons, giving the villagers the same lines which they had in 1803, and no more; unless, prior to the act of 1812, the corporate limits had been fixed and extended beyond the limits of 1803; and, after laying down the private claims, to section and subdivide the residue and return the official plats.

The surveyor general should refer to the ancient maps and title-papers in his and the recorder's office, and from them ascertain what were the exterior lines of the just claims in 1803.

It will be best to require copies of the papers and a report from him.

I am, &c.,

M. BIRCHARD, *Solicitor.*

To JAMES WHITCOMB, Esq.,
Commissioner, &c., &c.

Letter of Sur. Gen'l Milburn to Chairm. B'd of Trus. of Carondelet.

SURVEYOR GENERAL'S OFFICE,
St. Louis, 5th of December, 1839.

SIR: I enclose herewith, for the information of the corporate authority of the town of Carondelet, the copy of a letter, dated 24th of Sept., 1839, from the Comm'r of the Gen'l Land Office, in relation to the land embraced in the survey of the Carondelet common, south of the river des Peres; and also, the opinion of the Solicitor of the General Land Office on the same object.

As it is my wish to report to the Commissioner of the General Land Office without delay, I have to request that any information

which the trustees may desire to furnish be handed in at their earliest convenience.

I am, sir, very respectfully,
Your obed't servant,
WILLIAM MILBURN,
Surveyor General.

NICHOLAS POPE, Esq.,
Chairman of the Board of Trustees of the town of Carondelet.

Letter from Gen. Milburn to U. S. Rec'r of Land Titles for Missouri.

SURVEYOR GENERAL'S OFFICE,
St. Louis, 14th of Dec'r, 1839.

SIR: I am instructed by the Commissioner of the General Land Office to make a thorough, careful examination of the claim of the inhabitants of Carondelet to common, and to report to him, in detail, all my operations.

To enable me to comply with this instruction, I have to request a copy from the records of your office of all the documents relating to said common, which have not heretofore been furnished this office.

The only paper which I find on file here from your office, having a direct bearing on the subject, is a copy of the notice to the recorder, and the accompanying papers, from pages 195 and 196 of record-book D.

The papers in this office which have an indirect bearing are those relating to the grants and confirmations of the following claims:

Eugene Alvarez, certificate 1,339 } of the old board of commision-
Julien Chouquette, " 904 } ers.

Gabriel Constant, confirmation for thirty-five arpents, by the act of Congress of 29th of April, 1816.

Gabriel Cerre, decision 60 }
Treget Delor, " 121 } of the late board of commission-
Jean B. Martigny, " 170 } ers, and confirmed by the act
Sophia Bolage, " 279 } of 4th July, 1836.

These papers are defective in the following particulars:

1st. Those which relate to the claims of Alvarez, Chouquette and Constant, are mere abstracts of the confirmations, and contain nothing whatever concerning the origin of the titles, either with the Spanish or U. S. governments, nor of the evidence upon which the confirmations were founded.

2d. Your certificates of decisions No. 60, 170 and 279, of the late board of comm'rs, seem to contain copies of all the proceedings which had been had thereon, but the certificate of the confirmation under decision No. 121 gives nothing more from your records than the plat and notes of a survey by Joseph C. Brown.

You will please to make good these defective papers, and furnish me with such other information as your records afford—that is, in any way whatever connected with the claim to the common of Carondelet.

I am, very respectfully, sir,
Your obd't servant,
WILLIAM MILBURN,
Surveyor General.

F. R. CONWAY, Esq.,
U. S. Recorder of Land Titles for the State of Missouri, St. Louis.

Letter from Gen. Milburn to James Whitcomb, Com'r of Gen'l Land Office.

B.

SURVEYOR'S OFFICE,
St. Louis, 29th February, 1840.

SIR: I could not, consistent with the then pressing duties of this office, take up the subject of the Carondelet common, required by your letter of the 24th of Sept'r, until some time in the last part of the month of November. Upon examining the mattter, I considered it right and proper to inform the corporate authorities of the village of what was intended, and accordingly addressed them a note, of which the enclosed paper numbered 1 is a copy. I received for answer a note, and enclose you a copy thereof, numbered 2. As they asked me to withhold any final action or report on the subject, until they communicated all the information they could state, it was, in my opinion, due to them, as a matter of courtesy, to give ample time, even much more than I might consider necessary to prepare the intended statement.

Their report or statement, dated the 12th instant, was received a short time back, and the business will now be attended to at an early day. This information is given with reference to your letter of the 13th instant, calling my attention to the subject.

I am, very respectfully, sir,
Your obed't servant,
WILLIAM MILBURN,
Surveyor of Public Lands in the States of Illinois and Mo.

JAMES WHITCOMB, Esq.,
Comm'r of the Gen'l Land Office, city of Washington.

Rep't of Sur. Gen. Milburn, of 15*th April,* 1840, *to Com'r Gen'l Land Office.*

"A. No. 18." Report on the Carondelet Commons.

SURVEYOR'S OFFICE, *St. Louis,* 15*th of April,* 1840.

SIR: In compliance with your letter of the 24th of Sept'r, 1839,

I have examined all the papers in this office, and all which I can find in the office of the U. States recorder of land titles, that have any bearing, either directly or indirectly, on the title of the inhabitants of Carondelet to common south of the river des Peres, and submit for your consideration every fact which has come to my knowledge in relation thereto, and give the conclusions that I draw therefrom.

I will first take up the subject under the heads and in the order following:

1st. A statement in detail, of the progress of the claim, from its presentation for record to the U. States recorder of land titles, up to the passage of the act of Congress of the 13th of June, 1812.

2d. Give the construction put upon the act of 13th June, 1812, with respect to the commons of Carondelet, by the surveyors general for this district and the present recorder of land titles, and the evidence of their respective constructions.

3d. Consider some of the arguments of the Solicitor of the General Land Office against the validity of the title of the inhabitants of Carondelet to common south of the river des Peres.

1st. In conformity with the 5th section of the act of Congress, approved the 3d March, 1807, entitled "An act respecting claims to land in the Territories of Orleans and Louisiana," the inhabitants of Vide Poche, (Carondelet) on the 7th of June, 1808, presented to the recorder of land titles a notice in writing, and the written evidence of their claim to common, which notice in writing and written evidence was duly recorded on pages 195 and 196, book D, in the office of said recorder, as will be seen by the enclosed copy thereof marked A. This written evidence, placed upon record in conformity with law, furnishes us with the following facts.

1st. In answer to the petition of Gamache of the 6th of December, 1796, for a grant of the land lying between the field land and village of Carondelet, and the river des Peres, and extending from Constant to *to* the Mississippi, the Spanish lieutenant governor declared in writing, on the 7th of the same month, that the land which is asked for is included in that which has been reserved to furnish the wood necessary to the village of Carondelet, and the demand made by Mr. Gamache, as well as all concessions granted in the direction of the line beginning at the end of the lands of said village, and running parallel to the Mississippi, one hundred and fifty arpens lower, cannot be admitted.

2d. That on the 21st of Dec'r, 1797, Antoine Soulard, the surveyor general, in virtue of the order of the lieutenant governor, enjoining upon the inhabitants of Carondelet to make known the line of a tract which was conceded to them on the 7th of Dec'r, 1796, commenced the survey of said line. He first ascertained that the course of the line of which it was to be a prolongation was S. 28° W., and he followed the same course 23 arpens 3 ps. ½, at

which distance he intersected the river des Peres, and ceased operations.

3d. That the said surveyor general (Soulard) afterwards sent a deputy to complete the survey of the common, and that the deputy failed in the undertaking on account of his instrument being out of order.

We now come to the proceeding before the board of commissioners, which you will find in the accompanying papers marked B and C.

Throughout the proceedings of the board, the land claimed and asked to be confirmed by the inhabitants of Carondelet, as common, said to be 6,000 arpens, is the same which the lieutenant governor declared on the 7th of Dec'r, 1796, had been reserved to furnish the wood necessary to the village, and comprised within the limits designated in said declaration, in which no grants could be admitted, and which Chouteau and Provenchere proved had been used as common since about the year 1770.

The final decision of the board of the 2d of January, 1812, is in these words: "It is the opinion of a majority of the board that *that* this claim ought not to be granted, Clement B. Penrose, commissioner, voting for a confirmation thereof, under the usages and customs of the Spanish government."

(See also Am. State Papers, p. 672, vol. 2, Public Lands.)

The board having closed its labors on the 24th January, 1812, sent the report to Washington by Commissioner "Penrose."

(See page 677, Am. State Papers, vol. 3, Public Lands.)

On the 20th of March, 1812, Ex-commissioner Penrose, who was then in Washington city, submitted for the consideration of Mr. Gallatin, Secretary of the Treasury, a classification of the claims which had not been finally confirmed or granted by the board of commissioners, and some remark thereon.

(See page 447, and following, of vol. 2, State Papers, before referred to.)

The 9th class of Major Penrose consists of "claims for commons, viz: St. Charles, St. Louis, and Carondelet," these being the towns whose claims had been rejected by the board. And in his remarks thereon, (see page 449,) he says, "the ninth class ought to be confirmed; they would have been under every practice we have seen had the Spanish government continued the possession," &c.

On the 24th of the same month, Major Penrose condensed, for Mr. Gallatin, his classification of the claims on the 20th, in which condensation the 5th class is as follows: "Claims for towns or villages, their common-fields or field-lots, and their commons, either recorded or not recorded." In remarking this classification, Major Penrose says, "By the spirit of the ordinance, all these claims would have been confirmed or granted, although not embraced by the strict letter;" and he comes to the conclusion, with reference to

what he supposed to be the intention of our government, namely: "to do justice to their newly acquired citizens;" that "there can be no hesitation in confirming or granting such claims as are comprehended in the five foregoing classes."

These two letters of Ex-commissioner Penrose were communicated by Mr. Gallatin to the House of Representatives on the 22d of April, 1812.

We also find on pages 450 and 451, of vol. 2, Am. State Papers, a classification of the "claims" by Col. Riddick, who had been employed as clerk of the late board, addressed to Jeremiah Morrow, the chairman the Committee of Public Lands.

His 49th class of claims embraces villages, commons, common-fields, and lands adjacent, given to the inhabitants individually for cultivation, possessed to the 20th of Dec'r, 1803.

Col. Riddick remarks upon this classification—

"The foregoing table or list is intended to show the claims of Louisiana in all the variety of shades in which it is possible for the claimants to place them, out of which a selection may be made of such as are not yet provided for by law, but nevertheless ought in justice to be confirmed or granted to the claimants;" and he concludes with recommending that the 49th class be confirmed at once by the outer lines of a survey to be made by the principal deputy, &c.

Following quickly after the note of Commissioner Penrose, that the Carondelet common should be confirmed as claimed before the board, his classification of the "claims," for Mr. Gallatin, Secretary of the Treasury, on the 20th and 24th of March, 1812, which Mr. Gallatin communicated to Congress on the 22d of April, and in which classification Major Penrose distinctly refers to the claims for commons, as presented to the board; and the classification by Col. Riddick, addressed to the chairman of the Committee of Public Lands, in which he recommends that the claims to commons be confirmed, not by a survey already made, but by a survey to be made. We have the act of Congress of the 13th June, 1812, which enacts, "that the rights, titles, and claims to town or village lots, out-lots, common-field lots, and commons, in, adjoining and belonging to the several towns or villages of Portage des Sioux," &c., "Carondelet," &c., which lots have been inhabited, cultivated or possessed, prior to the 20th day of Dec'r, 1803, shall be the same, are hereby confirmed to the inhabitants of the respective towns or villages aforesaid, according to their several right or rights in common thereto, &c.; and it shall be the duty of the principal surveyor for the said Territory, as soon as may be, to survey or cause to be surveyed and marked (where the same has not already been done according to law) the out-boundary lines of the said several towns or villages, so as to include the out-lots,

common-field lots, and commons thereto respectively belonging," &c.

It will be observed that this law of the 13th of June, 1812, did not provide for further investigation of the claims for commons, but confirmed them absolutely, with reference of course to some determinate boundaries, for the indentification whereof we had the indisputable means, which in the case of the common of Carondelet can be no other than the written declaration of Gover. Trudeau, of the 7th of Dec'r, 1796, which had been duly recorded in the office of the U. States recorder of land titles, unless the quantity specified is to have precedence of the boundaries designated, in which event, according to the practice of this office, the claimants would be allowed the privilege of directing on which side or end the excess or deficiency should be thrown off or taken in.

The subject of the commons, &c., was brought to the consideration of Congress by Mr. Gallatin, Secretary of the Treasury, who, it appears from what has been stated, consulted and advised with ex-Commissioner Penrose, and communicated to the House of Representatives the information relating thereto, which he derived from that source. Indeed it is well understood here, that Mr. Penrose draughted the bill that was enacted by Congress, and approved the 13th of June, 1812, and in addition to the information thus derived from Mr. Penrose, we find Mr. Morrow, the chairman of the land committee, consulting Col. Riddick, late clerk of the board, who, as well as Mr. Penrose, advised the confirmation of the commons as claimed.

If there was any doubt as to the true meaning of the law approved the 13th of June, 1812, when considered by itself, the train of operations here detailed seems to me conclusive, that Congress intended to confirm, and did confirm the common of Carondelet according to the claim therefor of record in the office of the recorder of land titles. To what claim for common can the said act of the 13th of June, 1812, refer, if it is not to the claim on record in the U. S. recorder's office, and which had been before the board for confirmation? This claim was for the specified quantity of 6,000 arpens, as being the area comprised within certain designated boundaries. The only question therefore which can arise, according to my understanding, is, whether the specified quantity or the designated boundaries will control.

The requirements of inhabitation, cultivation or possession, can apply to the lots only; they have no connection with the common in the wording of the law. If I understand it rightly, indeed, inhabitation and cultivation are foreign to the uses for which commons were granted. If, however, it be decided that the requisite of possession has reference to the common, the testimony of Chouteau and Provenchére before the board, prior to the passage of the law, (accompanying paper B,) settles that point.

They prove that the land south of the village, and now (at the time of testifying) claimed, was made use of and possessed in the usual way of possessing common since about the year 1770, and the extent of the common then claimed, and thus proven to have been possessed, is distinctly fixed in the declaration of the lieutenant governor, by boundaries (although not run) so definite that they cannot be misunderstood.

2d. I will now proceed with the construction of the law of the 13th of June, 1812, by the several surveyors general of this district, and the present recorder of land titles.

1st. William Rector, surveyor general. See the accompanying copy, marked D, of the field-notes of a survey executed under his authority, shortly after the passage of the law, and a plat of the same.

2d. William McRee, surveyor general. See the accompanying copy marked E, from the record, of his letter to Charles Biddle, dated 25th of April, 1829, in answer to Mr. Biddle's application for the survey of a New Madrid claim, which letter of Col. McRee closes with this unequivocal paragraph:

"The original merits of the claim to commons set up by the inhabitants of Carondelet, the validity of the evidence, or genuineness of the documents adduced by them before the board of commissioners in support of their pretensions, were no doubt very proper subjects for the consideration of Congress prior to the passage of the act of the 13th June, 1812, confirming their claim. But they are, I conceive, wholly irrelevant to the only question which the law leaves in any degree to my discretion, which is simply to find out and establish the boundary lines of the tract as claimed before the board of commissioners, provided these boundaries can be established without interfering with any prior confirmed claim."

3d. Elias T. Langham, surveyor general. See a copy, marked F, of his instructions to Joseph C. Brown to connect with the adjoining public and private surveys, survey of the claim of the inhabitants of Carondelet for common, as surveyed under the authority of General Rector; and also the copy, marked G, of an approved plat and description of said survey, as executed and connected by Brown, under the instructions aforesaid.

4th. Daniel Dunklin, surveyor general. See a copy, marked H, of his voucher No. 3, of account current for the 2d quarter of 1838, under the general surveying appropriation, which shows that he paid Mr. Brown for running the lines of the commons and connecting them with the lines of the adjacent public and private surveys, under Mr. Langham's instructions of the 10th of February, 1834, and thereby approved the proceeding; for, had he de-

cided that the commons was not confirmed, or if he had had any doubts on the subject, he would have objected to the operation as illegal, and would not have paid for the survey, knowing, as he did, that an account for payments for illegal work would be disallowed in his settlement at the treasury.

5th. F. R. Conway, the present recorder of land titles. See the accompanying copy, marked I, of the confirmation certificate issued on the 22d of August, 1834.

It may be proper to state that I have not found any written evidence of the construction of the law by either Mr. Bates or Mr. Hunt, the predecessors of Mr. Conway.

I do not furnish this construction of the law, the *the* surveyor general and the recorder, nor the vote of Commissioner Penrose, and the opinions and statements of said Penrose and of Col. Riddick, under the belief that they are to control the undisputed meaning of the law, but that they may have due weight in case of doubt, as showing, first, the feelings and opinions of those who were mainly instrumental in the passage of the act; and secondly, the understanding of those whose especial business it has been to carry the law into effect, and who had no other interest in the matter than the obligation of performing in a proper manner the duty required of them as officers appointed to execute the laws of the land.

3d. I will now consider some of the arguments of the Solicitor of the General Land Office against the validity of the claim of the inhabitants of Carondelet to common south of the river des Peres.

The Solicitor says, with reference to the six private claims within the common as surveyed by Brown: "These concessions furnish evidence that the land in question was not regarded by the Spanish officers as parcel of the village commons, because they were all forbidden to grant village commons, and the legal presumption is, that they obeyed the instruction, and that therefore this land was not a common, but public domain."

With due respect for the opinion of the Solicitor, I think a further examination cannot do otherwise than overcome this objection, as it will be seen that of the six claims to which he refers only five are found on Spanish authority, and we have no evidence whatever of any action of the five by the Spanish officers after the declaration of the lieutenant governor of the 7th of December, 1796, on which day, it seems from the certificate of Soulard (accompanying paper A,) the land was conceded to the inhabitants of the village, having been possessed and used as common since about 1770, (see the accompanying paper B.) Indeed, with but little exception, these five claims all seem to have lain dormant from their conditional incipiency until their revival under the laws of the U. States.

They prove that the land south of the village, and now (at the time of testifying) claimed, was made use of and possessed in the usual way of possessing common since about the year 1770, and the extent of the common then claimed, and thus proven to have been possessed, is distinctly fixed in the declaration of the lieutenant governor, by boundaries (although not run) so definite that they cannot be misunderstood.

2d. I will now proceed with the construction of the law of the 13th of June, 1812, by the several surveyors general of this district, and the present recorder of land titles.

1st. William Rector, surveyor general. See the accompanying copy, marked D, of the field-notes of a survey executed under his authority, shortly after the passage of the law, and a plat of the same.

2d. William McRee, surveyor general. See the accompanying copy marked E, from the record, of his letter to Charles Biddle, dated 25th of April, 1829, in answer to Mr. Biddle's application for the survey of a New Madrid claim, which letter of Col. McRee closes with this unequivocal paragraph:

"The original merits of the claim to commons set up by the inhabitants of Carondelet, the validity of the evidence, or genuineness of the documents adduced by them before the board of commissioners in support of their pretensions, were no doubt very proper subjects for the consideration of Congress prior to the passage of the act of the 13th June, 1812, confirming their claim. But they are, I conceive, wholly irrelevant to the only question which the law leaves in any degree to my discretion, which is simply to find out and establish the boundary lines of the tract as claimed before the board of commissioners, provided these boundaries can be established without interfering with any prior confirmed claim."

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cided that the commons was not confirmed, or if he had had any doubts on the subject, he would have objected to the operation as illegal, and would not have paid for the survey, knowing, as he did, that an account for payments for illegal work would be disallowed in his settlement at the treasury.

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I will take up the six claims separately, in the order of their confirmation, and examine them with reference to the foregoing objection of the Solicitor, and take such other notice of them as may seem to have any bearing on the general object of this communication.

But before proceeding, I will observe that the Spanish concessions generally contained a condition, either expressed or understood, that they were not to be prejudicial to the rights of others, and that the land belonged to the king's domain, this being a necessary precaution, because connected maps on which the land was platted down when granted or surveyed did not belong to their system of laying off and disposing of the public domain, and we find that it was the universal custom of surveyor general Soulard, before putting a party in possession by survey, to notify the surrounding neighbors, (when there were any,) and to certify on his returns that his operations were performed in their presence. The practice, therefore, must have been, when it was found that one of these conditional grants interfered with other rights, that the surveyor general did not (as indeed he could not lawfully do) put the party in possession, but that the whole proceeding was arrested, and whilst the Spanish government continued in the possession other land was no doubt given, when desired by the claimants, in lieu of the preoccupied conditional concessions. If therefore it shall appear that none of the concessions south of the river des Peres, in the Carondelet commons, were surveyed, and the claimants were never put in lawful possession, and that the tract north of the river, although surveyed before the concession of the common, was apparently forfeited for want of improvement within one year and a day, will it not be proper, in absence of a better reason, to attribute this general failure to the ascertained interference of said claims with the land reserved for the use of the village, and afterwards conceded as common, and the consequent intention of the govt. not to perfect any of the said individual titles, which is plainly indicated by the lieutenant governor in refusing the petition of Gamache ?

In considering what is now to be said, it will be particularly necessary to distinguish in point of time between the general expression relative to the reservation of village common, and the concession therefor. I will now take up the claims in the order before designated, and proceed with the examination thereof.

1st. Julien Chouquette—Survey No. 904, for 640 arpens.

This title is not of Spanish origin, but it has its beginning with the gov't of the U. States, and was confirmed on the 25th of June, 1810, under the 2d section of the act of Congress of the 3d of March, 1807, which requires ten years' possession prior to the 20th day of December, 1803, whereas Chouquette only proves, by his ex parte testimony, inhabitation and cultivation for one year,

and cultivation for 6 or 7 years, which does not bring his possession down to 1803. He may have been dispossessed on account of intruding on the common, as was "Andre," the boat builder, as proven by Col. Auguste Chouteau in the accompanying document B.

This case, therefore, furnishes no ground to doubt the validity of the grant of common to the inhabitants of Carondelet village by the Spanish government. See the accompanying paper marked K, which contains all the evidence respecting this claim up to the confirmation.

2d. Gabriel Constant, junior—Survey No. 2,033, for 35 arps.

It will be seen by the accompanying copy of his grant and Spanish survey, marked L, that the land was conceded on the 4th of Sept'r, 1795, on condition that it be surveyed as soon as practicable, and also improved within a year and a day. The survey was executed on the 15th of April, 1796; but we find, by the enclosed copy, marked M, of the proceedings before the board, that Constant's only proof with respect to inhabitation and cultivation is, that he cultiv*ation* 9 consecutive years prior to 1810, and that he inhabited one winter 8 or 9 years prior to the 29th of Dec'r, 1813; it would therefore appear that, before the concession of the common, Constant's conditional grant was forfeited for want of being improved within a year and a day. But this claim has nothing to do with the common south of the river des Peres, as it lies altogether on the north side thereof, and within the bounds of what the Solicitor considers Soulard's survey of the common on the 21st December, 1797, and which he seems to admit was confirmed by the law of the 13th of June, 1812.

3d. Gabriel Cerré—Survey No. 3,067, for 400 arpens.

This claim was granted by Manuel Perez on the 15th of March, 1789, upon condition to establish and improve it in the term of one year. See the accompanying paper, marked N. The grant being upwards of seven years prior to the concession of the common, cannot operate to the prejudice of the claim for common, except so far as the identical land conditionally granted to Cerré is concerned.

There are other considerations with respect to this claim of Cerré which it will be well to notice, namely: the land may not have been improved in one year from the date of the grant, as, you will see, the witness is in doubt on that point, and he informs me it was cultivated but one season; and although it was proved before the board that the land was surveyed by Antoine Soulard, under the Spanish authorities, yet there is no survey on record, nor any certified copy or the original produced.

You will see by document N that the plat produced is one of a survey executed by Mr. Brown, who, in 1853, certified the plat, and thinks that at all the corners marked S were found old corner stones in 1822. Now, this survey by Mr. Brown is not an official survey by authority of the surveyor general, but it is a private

affair, and it is not 10 by 40 arpens, as granted to Cerré, and therefore the stones which were found cannot be corner stones of a lawful survey of the grant.

This is illustrated on the accompanying diagram marked O. Indeed, so different is Mr. Brown's survey, executed in 1822, and certified in 1833, from the order of the Spanish governor, that Surveyor General Dunklin disregarded it altogether in running out the tract under the confirmation, although he was repeatedly and urgently solicited to recognise it.

4th. Pere Delor—400 arpens—Survey No. 2,993, under decision No. 121 of the late board of commissioners. (See accompanying paper, marked P.)

This confirmation is founded on a paper produced to the board, and which, in the language of the board, purports to be a concession, but which does not appear in the proceedings to have been proved as genuine. I have, however, examined the original, which is now on file in the recorder's office, and have no doubt of the authenticity thereof. The order of the lieutenant governor bears date 6th of Dec'r, 1796, (the day before his declaration in accompanying paper A relative to the common,) and directs the surveyor to put the petitioner in possession of the land he asks, provided it belongs to the king's domain, and is not prejudicial to any other concession heretofore granted.

From the date of this order to the transfer of the country to the U. States was upwards of 7 years, and we have no other evidence of a Spanish survey having been executed, than that Mr. Boli states he was several times shown a tree, said to be the corner of said land as surveyed before Mr. Brown's operation in 1821, and that when Mr. Brown was running the lines, he (Boli) saw trees marked with old blazes, and heard of said Delor and others that these old lines were run by Bouvet, who was commissioned surveyor at the date of the concession, &c.

Mr. Brown, who would have been the proper person to prove the existence or the appearance of old corners and live trees, is silent on that head, both in his affidavit and certificate and plat of survey.

There is no evidence of inhabitation or cultivation under either the Spanish or American government.

Mr. Delor was a man in office in the village; and, unless he voluntarily abandoned the claim, or was deprived of it by lawful authority, would hardly have suffered it to sleep for seven years without making a move towards being put in possession according to the customs of the country, in order that he might obtain the title in due form, and make the establishment and improvements contemplated in his petition.

5th. Jean Baptiste Martigny—480 arpens—Survey 3,119. Decision No. 170 of the late board of commissioners.

This tract was conditionally granted on the 25th of April, 1783, more than 14 years before the conceding of the commons. One of the conditions of this grant is, that Martigny improves the plantation he asks for; on the contrary, the land to be incorporated to the royal domain. The requirement of improvement had of course reference to the time limited in the Spanish regulations, namely, a year and one day, and the only evidence of improvement is, that Martigny had a house on the land, and lived there 4 or 5 years; that he had a cornfield and garden, and had the place under cultivation till he sold it; but when he sold it it is not stated, nor can I find any evidence thereof upon record in the proper offices of the county; the cultivation may therefore not have been within the time required by the Spanish regulations, nor indeed is it certain that it was whilst the Spanish government possessed the country. We have no evidence of any Spanish survey, or of Martigny having been put in lawful possession, although the conditional grant was upwards of 20 years before the change of government. See the evidence respecting this claim in the accompanying paper marked Q.

6th. We now come to the 6th and last claim confirmed and surveyed within the common: Sophia Bolage—150 arpens—Decision No. 279 of the late board of commissioners.

The order of the Spanish lieut. governor of the 3d of June, 1796, is as follows: "In case the land asked for belongs to the king's domain, the surveyor of this jurisdiction shall put the petitioner in possession of the quantity of arpens she asks in the manner designated, in order to deliver to her the concession in form after the plat and certificate of survey are made out." (See the accompanying paper marked R.) Although more than seven years elapsed after this order before the transfer of the country, the petitioner was never put in possession by the surveyor general, nor was the concession delivered in due form.

The only evidence of cultivation is the affidavit of one individual before a justice of the peace in 1819, when no board of comm'rs was sitting; this individual testifies that corn and potatoes were planted and a house built about 30 years before that date, which would be 7 years before the order of survey, and does not accord with the words of the petitioner, who only says she had the timber prepared for a house, and had begun a field, &c.; we have no proof of either a survey, inhabitation, or cultivation, or any attempts thereat, after the conditional order of the lieutenant governor.

From what is here shown with reference to these private claims, it must be evident they would not in the least affect the title of the inhabitants of Carondelet to common within the limits designated by the lieut. governor in his declaration of the 7th of Dec'r, 1796, if the claim for common was up for adjudication, but as the said claim for common was confirmed by the act of the 13th of June,

1812, the question as to the original merits, or the extent thereof, is not now a subject for consideration; all we have to do is to survey the claim as confirmed.

The Solicitor further observes, the title which the inhabitants have exhibited to the land south of the river des Peres is the statement of Governor Trudeau, (dated Dec'r 7th, 1796,) rejecting a petition of Gamache, praying for a grant of land below the village, which states "that no concession can be made in the direction of a line taken from the end of the field lots of the village, and running parallel with the Mississippi, and farther down said river one hundred and fifty arpens, because the same is within the limits of the land reserved for the purpose of furnishing wood for the village."

This was shown to the board of comm'rs for adjusting titles, and accompanied with proof that the inhabitants cut wood below the village for many years, &c., (2d Am. State Papers, 549,) but the claim was rejected.

The declaration of the lieutenant governor was not merely shown to the board of comm'rs as is above intimated, but it was placed upon record on the 7th of June, 1808, in accordance with the laws of the U. States, as I have before stated, and the original still remains on file in the recorder's office. I have examined the writing and signature of said lieut. governor in said original declaration, in connection with his writing and signature in the "Livre Terrien," and other original documents now in the recorder's office, and I am fully satisfied as to the genuineness thereof; indeed so perfectly do they compare with each other, that there is no room to doubt.

It is true that the claim for common was rejected by a majority of the comm's, as stated in the above quotation from the Solicitor. That rejection, however, applies alike to the land north and south of the river des Peres; it is equally true, also, that very soon after this rejection by the board, the Congress of the U. States confirmed the claim of the inhabitants of Carondelet to common, and this confirmation most certainly embraces all the land claimed upon record, and includes what lies south, as well as that which lies north of the river des Peres, within the bounds designated in the declaration of Governor Trudeau.

The Solicitor observes in continuation: "It appears from a transcript of a survey made **February 25th*, 1797, of a tract conceded to the inhabitants †*Sept. 7th*,'1796, that the south line of the grant is bounded by the river des Peres. This survey being made subsequent to the rejection of Gamache's petition, if it be, as is supposed, a survey of the commons, will overrule any inference to be drawn from the expressions used by the governor in refusing the prayer of Gamache."

The Solicitor is wholly in error with respect to this transcript;

*Dec'r 21st, and certified 25th Dec'r, 1797. †Dec'r 7th, 1796.

it is not therefore to be wondered that he comes to a wrong conclusion.

The transcript of the survey is not, nor does it purport to be, the transcript of a complete survey, but the transcript of the survey of a single line, or only part of one of the boundary lines of a claim, which is fully proven by the certificate of the surveyor general, Soulard, recorded in the notice of the claim.

(See accompanying paper A.)

The Solicitor continues: "My belief is, that Brown's survey includes several thousand acres, to which the village of Carondelet has no legal or equitable title. If Mr. Brown's survey contains several thousand acres, to which the village of Carondelet has no legal nor equitable title, then, unless it be decided that the quantity claimed controls the boundaries, or that the indication of the position of the line by Soulard's survey, on the 21st of Dec'r, 1797, and in the calls in the claims of Alvarez and Valle, is to be disregarded, their whole claim for common must fall to the ground, for its foundation is with reference to the declaration of the lieutenant governor, recorded and filed by them in the office of the U. States recorder of land titles; and to which all subsequent proceedings, including the act of Congress of the 13th of June, 1812, have distinct reference, either directly or so plainly implied as not to be misunderstood."

Prior to the passage of the said act of the 13th of June, 1812, they had never claimed otherwise that as specified by Trudeau. Then, if Congress did not mean to confirm their claim according to said specified boundaries, what other limits could have been intended?

The Solicitor says, in conclusion: "The surveyor general should refer to the ancient maps and title-papers in his and the recorder's offices, and from them ascertain what were the exterior lines of the first claims in 1803. It will be best to require copies of the papers, and a report from him."

There are no ancient maps in either this or the recorder's office which have any bearing on the subject, and the only ancient title-papers which go to show what were the just bounds in 1803, are the declaration of the lieutenant governor of the 7th of Dec'r, 1796, the certificate of survey of that part of the western boundary which lies north of the river des Peres, and the certificate of the surveyor general relative to the cause of failure in completing the survey, all copied in the accompanying paper A, and the papers relative to the claims of Alvarez and Valle, marked S and V, and which will be noticed immediately following.

Having disposed of the subject to the extent designated in the outset of this communication, I will introduce some additional evidence that the title of the village of Carondelet to common south

of the river des Peres was officially recognised by the Spanish lieut. governor, and that such seemed to be the common understanding of the people of the country up to the change of government.

Although the first official statement which we have of the extent of the common of Carondelet is the declaration of the lieut. governor of the 7th of Dec'r, 1796, yet we have *have* evidence that their title south of the river des Peres was officially recognised before that date. You will see by the accompanying copy (marked S) of Alvarez's petition for a grant of land, dated 15th Nov'r, 1796, that he asks for the "vacant land lying from the limits of the land of Carondelet to those of Mr. Reilhe, which he thinks will be about 6 arpens in front, facing the river des Peres, by forty in depth." (This, the plat marked U, and connected plat X, will show you is north of the river des Peres.) He further asks: "And on the opposite side of said river ten arpens wide, departing from the limits of Carondelet, and ending at those of the lands of the domain."

The lieut. governor, on the 18th of the same month, directs the surveyor general to establish the petitioner upon the lands asked for, and subsequently thereto to execute the survey, &c.; all of which was duly registered and recorded, and the claim was confirmed by the old board of commissioners.

See the accompanying copy of proceedings, marked T, in which, however, the board has omitted, in reciting the outlines of the petition, to notice the *expresses* therein relative to the limits of Carondelet south of the river des Peres.

Also, after the declaration of the lieut. governor, that certain land had been reserved for the village, and no concessions could be admitted between the river Mississippi and a line running parallel thereto, 150 arpens from the field lands, we have the petition of Charles Valle, dated 11th of April, 1797, who states that two years before he had formed an establishment on the river Gravois; therefore "he prays the lieut. governor to be pleased to concede to him 15 arp's wide by 40 deep, the limits thereof to be taken at the limit of the village of Carondelet," &c.

The lieutenant governor directs the "surveyor to put the petitioner in possession of 400 arpens of land, at the place by him designated, so far as the land is there vacant, and the granting thereof is not prejudicial to anybody." (See the accompanying paper, marked V, which also shows that this grant was surved by the deputy surveyor, James Mackay, on the 17th of April, 1803, containing 413 arpens, being an excess of 13 arpens.) And on the 6th day of February, 1804, the executor of the estate of Valle sold 4 by 40 arpens of said land to John Colgin, and in the deed the land thus sold is described as being on the river Gravois, and bounded on one side by the "commons of Carondelet." This deed was executed in the presence of the lieut. governor, Delassus,

and by him approved and duly and properly witnessed and authenticated.

The claim was confirmed to the extent of 400 arpens by the old board to said John Colgin, under Charles Valle, to be taken within the bounds of the 413-arpent Spanish survey. See the accompanying paper, marked W. The survey and its connections with the public surveys, under the confirmation, gives the position of this claim of Valle with reference to the Carondelet common, as represented by the accompanying plat X, on which it is numbered 2,995; it does not exactly adjoin the line of the commons as surveyed by Brown, there being a space intervening between them; but as the survey includes the establishment of Valle on the Gravois, and is upwards of 100 arpens southward of the southwest corner of the field lands, and lies very near the Carondelet line, we can draw therefrom no other conclusion than one favorable to the claims of the village for common, to the full extent of the 150 arpens from the line of the common-field.

I enclose a plat marked X of the survey of the common of Carondelet, as retraced by Mr. Brown, and connected with the adjoining public and private surveys, showing the position therein of the six private claims to which the Solicitor refers, and also the surveys of Alvarez and Valle, just before referred to, and containing other information in a marginal note, not directly connected with the present inquiry, but which it is proper for your attention to be called to, whether you decide in favor of or against the claims of the villagers.

From the facts here presented, and the inferences which I have drawn therefrom, you will see that my construction of the law is distinctly in favor of the village to the extent of 150 arpens from the S. W. corner of the field lands, and were there no controlling circumstances, I would not hesitate to run the west boundary, as represented by the black dotted line c d on the plat X, which is 150 arpens, parallel to the general course of the Mississippi; but when I take into consideration the operation of Soulard, in running the line c e north of the river des Peres, and the Spanish calls for the limits and common of Carondelet, in the claims of Alvarez and Valle, I am led to believe that it was the intention of the Spanish government to prolong the line c e to a, which is about parallel to the river for some distance; and that as the act of Congress had in view the carrying out and fulfilling this intention of the Spanish government, as claimed before the board, it ought now to be adhered to, by adopting the line c a.

As no great injury can result from a delay, I have thought best to submit this statement and the accompanying documents before ordering a survey, inasmuch as there seems to be a contrariety of opinion, and you have the controlling power in case of disagree-

ment, and can understand the subject as well in its present condition, as if a new survey was actually made.

I also enclose the communication, marked Y, of the attorney employed by the board of trustees of the village, and the affidavits numbered 1 to 7, to which he refers.

The other papers which he calls for have already been enumerated, and are properly referred to in the margin of the argument.

I am, very respectfully, sir,

Your obedient servant,

WILLIAM MILBURN,

Surveyor of the Public Lands in the States of Illinois and Missouri.

JAMES WHITCOMB, Esq.,

Commissioner of the General Land Office, City of Washington.

A.—(With preceding report.)

To the Recorder of land claims for the Territory of Louisiana:

Take notice, that we, the inhabitants and settlers of the village of Vide Poche, in the district of St. Louis, claim title to 6,000 arpens of land, situate adjoining said village, by virtue of a concession from Don Zenon Trudeau, lieut. governor of Upper Louisiana, dated the 7th Dec'r, 1796.

St. Louis, 7th June, 1808.

On the part of said inhabitants,

B'TE LAJOYE FILS.

LOUIS sa ✕ marque. MENARD, Pere.

[N. B.—The original of the following documents Nos. 1 to 4 is in the French language. I give the translation as given in the sur. general's report, deeming that all-sufficient.

F. M.]

No. 1.

To Don Zenon Trudeau, Captain in the Stationary Regiment of Louisiana, Lieut. Governor and Commander-in-Chief of the Western part of Illinois:

The deplorable condition in which the village of Carondelet is about to fall, now and hereafter, on account of the exportation of wood, [(a) induces the undersigned to have] the honor to state, that after the petition he handed to you on the 5th of October last, for the purpose of claiming the continuation of their lands, you told him that, although you could not accede to his demand, you would, however, make your efforts to grant him 40 arpens above the Parc. The village prays you to be willing to turn your attention to the

fact, that he has at present a great inducement to work, on account of this mill, and that it is his intention to sow with grain as much land as he is able to do. Therefore this petition is given in charge to Mr. Gamache, to be delivered to you, and he hopes that you will be pleased to take into consideration his demand and the misery which threatens him, and grant to him the continuation of the lands (common-fields,) taking for his limits the limit of Mr. Constant; thence to the Mississippi and the river des Peres for limit, coming to the same village of Carondelet. He expects everything from your goodness, and believes that you will grant his demand. He shall never cease to be thankful.

At the village of Carondelet, the 6th of Dec'r, 1796.

his
JOHN B. ⋈ GAMACHE.
mark.

(a). These five words have been introduced by the translator to supply the deficiency of the text.

No. 2. The land which is asked for is included in that which has been reserved to furnish the wood necessary to the village of Carondelet, and the demand made by Mr. Gamache, as well as all concessions granted in the direction of the line beginning at the end of the lands of said village, and running parallel to the Mississippi, one hundred and fifty arpens lower, cannot be admitted.

St. Louis, the 7th Dec'r, 1796.

ZENON TRUDEAU.

No. 3. Upper Louisiana, village of Carondelet, district of St. Louis of Illinois.—L. B., No. 139, Fo. 27.

We, the undersigned, a surveyor commissioned by government, do certify to all to whom it shall appertain, that on this day, 21st of Dec'r, in virtue of the order transmitted by the lieut. governor to Mr. de Treget, captain commandant of the said village, enjoining upon the inhabitants to make known the line of a tract of land which was conceded to them on the 7th of Dec'r, 1796, which line must be parallel with those of Messrs. Ant'e Reilhe and Alvarez.

The said inhabitants, in presence of their commandant, have agreed upon causing their line to be drawn from the last bound placed at the extremity of the depth of their lands which had been formerly surveyed by Mr. Pre. Chouteau, in virtue of an order from the lieut. governor. Having taken the bearing course of the same lands, I found that they ran S. 28° W.; I followed this same course 23 arpens 3½ poles, at which distance I intersected the river des Peres; the end of the line on the bank of the same river has been bounded with a stone, having for witnesses two flint stones and one flattened lead bullet. The land of Mr. Alvarez must be distant from the same stone bound 24 feet in following the same

line parallel, and in order that the said inhabitants may prove the same, I have delivered the presents.

St. Louis of Illinois, the 25th of Dec'r, 1797.

ANTOINE SOULARD.

No. 4. I do certify, wherever it may be needful, that the inhabitants of the village of Carondelet have requested me to measure for them, or to cause to be measured by one of my deputies, a portion of land which was granted to them as a common by the Lieut. Gov'r Don Zenon Trudeau. This land was to be surveyed by Mr. Bartholomew Cousin, who transported himself to the village of Carondelet for that purpose. But at the moment he would set his instrument, he found it out of order, an inconvenience which did prevent the said survey to be then made, and the short space of time that was left to attend to it again has hindered me from being able to satisfy to the urgent calls made on me by the citizens of the settlement of Carondelet.

In faith whereof, I have delivered the presents to the interested, that they may serve the same wherever needed.

St. Louis, 18th February, 1806.

ANTOINE SOULARD,
Surveyor General, Territory Louisiana.

Note.—That part under No. 1, of this translation, from the imperfectness of the original, could be rendered in two versions; either as a collective petition of sundry inhabitants of Carondelet asking for common-fields, and intrusting Gamache with the care of handing of their document; or, as a demand made by Gamache for himself. This last version has been adopted by the translator as the more conformable to the expressions used by the Zenon Trudeau in his declaration upon the request, and the wording of the proceedings of the board of commissioners in the claim of the Carondelet common.

"A, No. 14." B.

(Being the "proceedings of the old board, 1808 and 1812." See page 26 of this transcript.—Clk.)

C.

(Evidence and survey of 1808, by Bent. See page 30 of this transcript.—Clk.)

"A, No. 15." D.

(Rector's survey, with field-notes and certificate. See page 32 of this transcript.—Clerk.)

E.

Letter from Wm. H. McRee to Chas. Biddle.

SURVEYOR'S OFFICE, ST. LOUIS,
25th April, 1829.

SIR: I have to acknowledge the receipt of your letter of the 23d instant, informing me, that as I had expressed some doubts about complying with your application for a patent (survey) for the tract of land located, by virtue of the New Madrid certificate, (No. 338,) in the name of Patterson, you have concluded to submit the matter to the decision of the Commissioner of the Gen'l Land Office; and that before taking this step, you wish to know whether there are any documents officially known to me, which show that any claim for commons has ever been made by the people of Carondelet; and if so, whether any limits to their claims have ever been stipulated; or, in short, whether I have any other official knowledge on the subject, except what is contained in the act of Congress passed the 13th June, 1812.

In reply to these inquiries, I have to state, that the only information possessed by this office, and on file at the date of your letter, concerning the Carondelet commons, was the law of the 13th June, 1812, which confirms them as claimed, and a statement in the Register d'Arpentage, from which it appears, that by virtue of an order from the lieutenant gov'r, a line had been run from the S. W. corner of their lands ("a prender de la derniere borne posse a l'extremite de la profondeur de leur terres;" meaning, I presume, the S. W. corner of their common-fields,) 23 arp's 3 p's ½ to the river des Peres, on a *a* course S. 28° W., parallel to the S. E. boundary line of the claim of Alvarez, and distant from it "24 feet." This line purports to be a boundary to ground conceded to the inhabitants of Carondelet on the 7th Dec'r, 1796, and is therefore an intimation, (however indefinite,) of their claim in common to lands beyond and south of their village and common-field lots.

During the conversation I had with you and General Ashley, on the subject of the New Madrid certificate, (No. 338,) I took it for granted that the location made under that certificate was within the reputed limits of the Carondelet commons, in which case I was (and still am) of the opinion, that I could not with propriety cause it to be surveyed; for, if there were any facts, or any information whatever, concerning those commons, which might enable me to determine their boundaries, &c., as claimed before the board of commissioners, and which were of record in the recorder's office, they constituted, in the contemplation of the law, a part of the official information within my reach, and therefore virtually in the possession of this office.

On the receipt of your letter of the 23d instant, I addressed a note to the recorder of land titles, requesting him to furnish me with such extracts from the records of his office in relation to the

Carondelet commons, as might enable me to ascertain their extent, boundaries, &c. And in answer to that application, I have received from him some extracts from the proceedings of the board of commissioners, a copy of which is herewith enclosed for your information.

Permit me to call your attention to the declaration of the Lt. Gov. Zenon Trudeau, (which you will find among these extracts,) on the petition of Jean B'pt'e Gamache for a tract of land, which petition is refused, for the express reason that the land requested "is comprised in that which has been reserved to furnish the wood necessary to the village of Carondelet;" and the lt. gov'r goes on further to say, that the demand "ne put avoir lien, ainsi que toutes concessions accordier dans la direction de la ligne puise au bout des terres du dit villages, et courant parallellement au Mississippy cent cinq'te arpens plus bas."

Now, a line running from the S. W. corner of the common-field 150 arp's—or rather, the line which had been run from the S. W. corner of the common-fields to the river des Peres—if extended to 150 arpens in a direction parallel to the Mississippi river, will include the greater part of the tract located under the N. M. certificate No. 338.

The original merits of the claims to commons set up by the inhabitants of Carondelet, the validity of the evidence, or genuineness of the documents adduced by them before the board of commissioners, in support of their pretensions, were, no doubt, very proper subjects for the consideration of Congress prior to the passage of the act of the 13th June, 1812, confirming the claim, but they are, I conceive, wholly irrelevant to the only question which the law leaves in any degree to my discretion, which is simply to find out and establish the boundary lines of the tract as claimed, before the board of commissioners, provided these boundaries can be established without interfering with any prior confirmed claim.

Respectfully, you most obed't servant,

WM. H. McREE.

CHAS. BIDDLE, Esq.,
St. Louis.

"A, No. 29." F.

Instr't's to Jos. C. Brown.

SURVEYOR'S OFFICE,
St. Louis, 10*th February*, 1834.

To Jos. C. Brown, Deputy Surveyor:

SIR: You will receive herewith a copy of the field-notes of the survey of the land claimed by the inhabitants of Carondelet as commons, but which is not sufficiently connected with the adjoining public and private surveys.

You are, therefore, hereby authorized to retrace the lines, and

re-establish the corners of said survey, and to connect it with the said adjoining surveys, by establishing the proper corners at the intersection of the several lines thereof with the lines of the other claims, and with the lines of the public surveys, and measure and state in your field-notes the course and distance therefrom on the lines so intersected to the nearest corner outside of the commons.

When the corners described on the within copy of the field-notes of the survey of the commons can be found and properly identified, you will run to them. When they cannot be so found and indentified, you will run the proper course and distance, or to the intersection of the natural or artificial boundary called for, viz: the Mississippi river, and the common-fields and Alvarez claim, as the case may be.

If the S. Western corner cannot be found, you will re-establish it at the intersection of the southern and western boundary lines of the survey.

You will consider the corporate authorities of Carondelet as the proper source of information or instruction, in all cases when, under similar circumstances, an individual claimant would be applied to in the survey of his claim. You will, therefore, give the said authorities due notice of the time when you will commence operations. You will connect this survey with the survey of the commons of St. Louis, whether it interferes therewith or not.

For executing the surveying hereby authorized, there shall be paid to you, on account of the U. States, at the rate of three dollars per mile for every mile and part of a mile of the boundary line of the commons, and of the lines measured from the corners established at the intersection of the commons therewith, to the nearest corner outside of the commons, provided your returns are made within sixty days from the date hereof, and that your surveys and returns are approved of by the U. States surveyor in Illinois and Missouri.

You are also authorized to survey 35 arpens for Gabriel Constant, at the expense of the claimant, and connect it with the public lines at the expense of the U. States, at the rate of $3 00 per mile.

This survey will be according to the enclosed transcript of confirmation marked A, and the original survey marked B.

The claimants must show the corners at the extremities of the line of their survey, which runs S. 45° E. Said corners, as will be seen by the paper marked B, are stones witnessed by the dross of iron. In all cases not otherwise herein specified you will be governed by the instructions issued to you on the 4th inst. for the survey of the claims of Gervais and Ortiz, so far as said instructions are applicable thereto.

I am, sir, very respectfully,
Your obedient servant,
E. T. LANGHAM.

G.

(Plat and survey of the commons of Carondelet by Jos. C. Brown, see page 34 *in* of this transcript.—Clerk.)

H.

This document consists of nothing more than Joseph C. Brown's account against the U. States for the execution of the foregoing survey; and it is therefore deemed useless to insert here.

I.

(Certificate of confirmation by recorder of land titles. See page 40 of this transcript.—Clerk.)

Claim of Julien Chouquette.

"A, No. 24." K.

To Frederick Bates, Esq., Recorder of Land Titles:

Take notice, that Julien Chouquette claims title to 640 arpens or acres of land, situate on the Mississippi river, at the junction of the river au Pere with the Mississippi, in the district of St. Louis; which said tract of land said Julien Chouquette actually improved, cultivated and inhabited, from the year 1798 until the year of 1803, and on the 20th day of that year last mentioned by permission of the proper Spanish officer.

R. EASTON,
Agent for Claimant.

June 27th, 1808.

See record-book D, page 327.

Tuesday, October 25th, 1808.

Board met: Present, the Hon. Clement B. Penrose, Frederick Bates.

Julian Chouquettes, claiming 640 arpens of land, situate on the Mississippi river, at the junction of the river au Pere with the Mississippi, district of St. Louis, produces to the board a notice of claim to the recorder, dated 27 June, 1808.

Louis Courtois, sen'r, sworn, says, that about 15 or 16 years ago claimant built a cabin on the tract claimed, and raised a crop, and inhabitated and cultivated the same for one year, and cultivated for 6 or 7 years.

Laid over for decision. Board adjourned.

CLEMENT B. PENROSE.
FREDERICK BATES.

See minutes, book No. 3, pp. 322, 324, 326.

Monday, June 25th, 1810.

Board met: Present, John B. C. Lucas, Clement B. Penrose, Frederick Bates, commissioners.

Julien Chouquette, claiming 640 arpens of land. See book No. 3, p. 324. The board grant to Julian Chouquette the above tract of land, provided it does not exceed 640 arpens, under the 2d section *on a* act of Congress entitled "An act respecting claims to land," and passed the 3d March, 1807, and order that the same be surveyed conformably to his possession.

Board adjourned till to-morrow, 3 o'clock p. m.

JOHN B. C. LUCAS,
CLEMENT B. PENROSE,
FREDERICK BATES.

See minutes, No. 4, pages 404, 406, and 407.

Monday, June 10th, 1811.

Board met: Present, John B. C. Lucas, Clement B. Penrose, Frederick Bates, commissioners.

Cer. 904: Julian Chouquette, book 4,406. Survey at expense of claimant. Board adjourned till to-morrow, 8 o'clock a. m.

JOHN B. C. LUCAS,
CLEMENT B. PENROSE,
FREDERICK BATES.

See minutes, book No. 5, pp. 176, 177, and 181.

RECORDER'S OFFICE,
St. Louis, Missouri, 21st Dec'r, 1839.

The foregoing is truly transcribed from the books of record on file in this office.

F. R. CONWAY,
U. S. Recorder of Land Titles in the State of Missouri.

L.

Claim of Gabriel Constant, Jr.

Gabriel Constant claims 35 arpens of land, situate in the Territory of Louisiana, granted to him by Zenon Trudeau, the 4th of Sept., 1795.

[Note.—In this and in all other cases I omit the original French and Spanish, giving the translation, as made for the report.

F. M.]

To Don Zenon Trudeau, Captain in the Regiment of Louisiana and Lieutenant Governor of the western part of Illinois:

SIR: With the greatest respect, Gabriel Constant, junior, has the honor to represent to you, that being now of age, to form by himself a little establishment which may afford him the means of subsisting from his own labor, and having his father's permission for the same, he wishes to obtain the concession of a tract of land of 35 arpens in superficies, or thereabouts, limited by a bend of

the left and north bank of the small river des Peres, at about one league from the village of Carondelet, the said land being commonly called "Belle Pointe;" which being considered, sir, may you be pleased to grant him the concession in form for the said land. Favor that he hopes from your benevolent generosity.

his
GABRIEL ⋈ CONSTANT.
mark.

We, Zenon Trudeau, captain in the regiment of Louisiana, lieut. governor of the western part of Illinois, after having seen the above demand of Gabriel Constant, junior, do concede to him, his heirs or legal representatives, thirty-five arpens of land, forming the "Belle Pointe" (Favi Bend) of the river des Peres, bounded by its windings, and by a straight line that shall cross said tract, so as to include the totality of the 35 arpens, on condition by the grantee to cause the land to be surveyed as soon as practicable, to set bounds thereto and improve it within a year and one day: the same being liable to all public charges that it shall please his majesty to impose thereon.

ZENON TRUDEAU.

Saint Louis, 4th September, 1795.

UPPER LOUISIANA,
District of St. Louis of Illinois.

We, the undersigned, a surveyor commissioned by government, do certify to all those whom it may appertain, that on this day, 15th of April, 1796, we have, at the request of Mr. Gabriel Constant, junior, transported ourself on his land, lying about 3 miles distant from the village of Carondelet, and at a very little distance of the King's road, leading to the Saline. The land of the said proprietor being circumscribed by a bend of the river des Peres, commonly known by the name of the "Belle Pointe," we have contented ourself to close said land with a line running S. 45° E., which line crosses said river and is at its two extremities, on the bank of the river des Peres, bounded by a stone with witness of dross of iron.

The area comprised within the contour of the river at this place and the line by us drawn, may contain thirty-four or 'six arpens in superficies, or thereabouts; and in order that the owner may prove it, we have delivered the presents, to be used by him wherever needful.

ANTOINE SOULARD.

St. Louis of Illinois, the 15th of April, 1796.

M.

Proceed'gs of Board on Constant's Claim.

Friday, November 1st, 1811.

Board met: Present, John B. C. Lucas, Clement B. Penrose, and Frederick Bates, commissioners.

Gabriel Constant fils, claiming 35 arpens of land, situated Belle Pointe, near Carondelet, district of St. Louis, produces a concession from Zenon Trudeau, L. G., dated 14th Sept., 1795, a report of survey, dated April 15th, 1796.

It is the opinion of the board, that this claim ought not to be confirmed.

Board adjourned till to-morrow, nine o'clock a. m.

JOHN B. C. LUCAS,
CLEMENT B. PENROSE,
FREDERICK BATES.

See minutes, book No. 5, pp. 386, 393, and 394.

Minutes of the recorder of land titles, acting as comm'rs under the act of Congress entitled "An act making further provision for settling the claims to land in the Territory of Missouri," passed the 13th day of June, 1812, and other acts subsequently passed.

FREDERICK BATES,
Commissioner.

St. Louis, December 29th, 1813.

(B. 461.) Gabriel Constant, claiming 35 arpens of land, Belle Pointe, near Carondelet, produces concession from Zenon Trudeau, lieut. governor, dated 14th Sept., 1795.

Minutes 5, p. 393.

Pierre Villery, duly sworn, says that claimant cultivated the tract during nine consecutive years prior to 1810; that he inhabited the same during one winter, 8 or 9 years ago. This land is about 80 arpens from village of Carondelet, where claimant resides. (Confirmed.)

See Bates's minutes, pp. 1, 120, and 124.

RECORDER'S OFFICE,
St. Louis, Missouri, 23d December, 1839.

The foregoing is truly transcribed from the minutes of record, on file in this office.

F. R. CONWAY,
U. S. Recorder of Land Titles in the State of Missouri.

N.

Gabriel Cerre's Claim.

"A, No. 25." No. 60. Gabriel Cerré, by his legal representatives, claiming 10 by 40 arpens.

To Don Manuel Perez, Captain of the Regiment of Infantry, of Louisiana, Lieutenant Governor, &c.

Having examined the contents of the memorial presented by Don Gabriel Cerré, residing in this town of St. Louis, and bearing date the 11th of March, 1789, I granted and *to* grant to him in fee, for him, his heirs and assigns, a tract of land of ten arpens in front by forty in depth, situated on river Gravois, which empties in river des Peres, at the distance of 2 leagues from this town, and about 8 arpens from the river Mississippi, bounded on every side by the king's domain, under condition to establish and improve the same in the term of one year from this date; on the contrary, to remain incorporated *to* the royal domain.

The said land to be subject to the public charges and others which it may please his majesty to impose.

Given in St. Louis of Illinois, on the 15th day of March, of the year 1789.

MANUEL PEREZ.

Truly translated from Livre Terrien, book No. 4, pages 21 and 22.

JULIUS DE MUN.

St. Louis, Feb'y 10, 1833.

Survey of same by Brown, &c.

[For plat, see original, page 145.]

Surveyed a tract of land for Frederick Dent, as then claimant, of which the old bounds were found, or so many as to make the survey sufficiently certain. At all the corners marked with the letter S, I think, were found old corner stones.

The survey was made, I think, on the 13th February, 1822.

(Signed) JOS. C. BROWN.

May 4th, 1833.

Evidence with reference to Minutes and Records.

February 8th, 1833.

F. R. Conway, esq., appeared, pursuant to adjournment, having been authorized by a resolution of the board of commissioners, of the 1st of Dec'r last, to receive evidence.

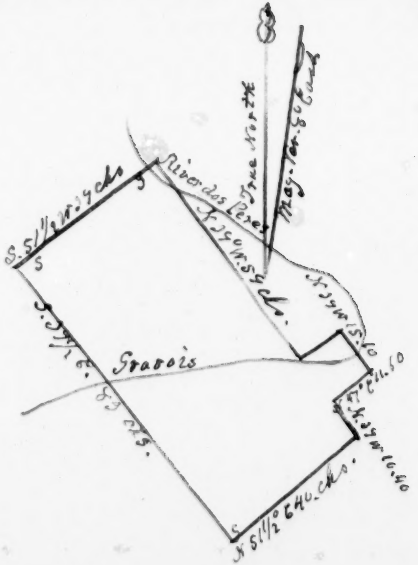
Gabriel Cerré, by his legal representative, Frederick Dent, claiming 10 arpens of land in front by 40 arpens in depth.

See Livre Terrien No. 4, pages 21 and 22.

For general notice, see record-book F, page 146; for record of concession, see book F, p. 195. Produces a paper purporting to be a certified copy of a concession granted by Manuel Perez, lieut. governor, dated March 15th, 1789.

Pascal Cerré, being duly sworn, saith that he is acquainted with

No 259 pa: 145


Mag. Var. 8° East
True North
Rivers des Peres
S. 51 1/2 W. 9 chs.
S. 51 1/2 W. 65 chs.
S. 51 1/2 W. 64 chs.
S. 39 1/2 E.
Stanois
S. 51 1/2 E. 64 chs.
N. 39 1/2 E. 16.40
N. 51 1/2 W. 64 chs.
N. 51 1/2 W. 9 chs.

the tract mentioned in the above concession; that it was granted to his father by Manuel Perez, in the year 1789; that in the beginning of June, 1789 or 1790, but he rather thinks it was in the year 1789, his father had two ploughs at work on said land and planted a corn-field, which was not fenced in; that he had a cabin built, and an orchard planted; that he, said deponent, planted said orchard with his own hands, and had it fenced in, and had grass mowed on said land, and had two hay stacks made in the enclosure of said orchard; that his father remained in possession until the deponent's mother died, when a division of the property took place, and the said land fell into the deponent's hands; that now, he has no kind of interest in said property, having sold the same to Abraham Gallatin; that said land was surveyed by Antoine Soulard, under the Spanish authorities.

See book No. 6, page 98.

May 22d, 1833.

F. R. Conway, esq., appeared, pursuant to adjournment.

In the case of Gabriel Cerré, claiming 10 arpens of land in front, by 40 in depth, (see page 98 of this book,) the claimant produces a paper purporting to be a plat of survey signed by Jos. C. Brown, and dated February 13th, 1822.

Jos. C. Brown, duly sworn, says that the plat of survey presented by the claimant was executed by him, in conformity to the survey he made of said land, and that what is therein stated is true.

See book No. 6, page 169.

November 8th, 1833.

The board met pursuant to adjournment: Present, L. F. Linn, A. G. Harrison, F. R. Conway, commissioners.

Gabriel Cerré, claiming 400 arpens of land.

See pages 98 and 169 of this book, No. 6.

The board are unanimously of opinion that this claim ought to be confirmed to said Gabriel Cerré or his legal repre's, according to the concession.

L. F. LINN,
F. R. CONWAY,
A. G. HARRISON.

See p. 308, book No. 6.

RECORDER'S OFFICE, ST. LOUIS, MISSOURI,
November 10*th*, 1836.

I certify that the foregoing mentioned and described tract of land, of four hundred arpens, in the name of Gabriel Cerré, claimed by Frederick Dent, was recommended for confirmation by the late board of commissioners, decision No. 60, and that the same is duly

confirmed by the act of Congress entitled "An act for confirming claims to land in the State of Missouri, and for other purposes," approved the 4th July, 1836.

F. R. CONWAY,
Recorder of Land Titles in the State of Missouri.

To DANIEL DUNKLIN, Esq.,
U. S. Surveyor of Pub. Lands,
St. Louis, Missouri.

Compar'on of the Situat'ns by Brown of the Cerre Claim.

[For plat marked O, see original, page 147.]

SURVEYOR'S OFFICE,
St. Louis, 15th April, 1840.

The above lines drawn with black ink represent the plat of the survey of 400 arpens of land, as executed by Jos. C. Brown, deputy surveyor, in his private capacity, in the year 1822, certified by him in 1833, and presented to the late board of commissioners, and reported with their decision, No. 60, the most northern, the most southern, and the most western, corners of the main body of this survey, and the most eastern corner of the *adjection*, are the corners marked with the letter "S" in the copy furnished this office by the recorder of land titles, and are, therefore, those at which Mr. Brown thinks old corner stones were found. To show the departure of this plat from the requirements of the concession, (10 by 40 arpens,) I have dotted above with black ink (a b, b c, c d, and d a.) a tract of that form conforming to the S. W. and a part of *of* N. W. boundary lines of Mr. Brown's survey. I have also, as near as practicable, laid down the survey by red dotted lines, (e f, f g, and h e,) as run out under the confirmation, and numbered 3,067 on the connected plat.

WILLIAM MILBURN,
Surveyor of the Public Lands in the States of Ills. and Mo.

"A, No. 26." P.

Pierre Delor's Claim, Survey, &c.

Pre. Delor de Treget to Frederick Bates, Esq., Recorder of Land Claims:

SIR: Please to take notice that I claim 400 arpens as per the within concession.

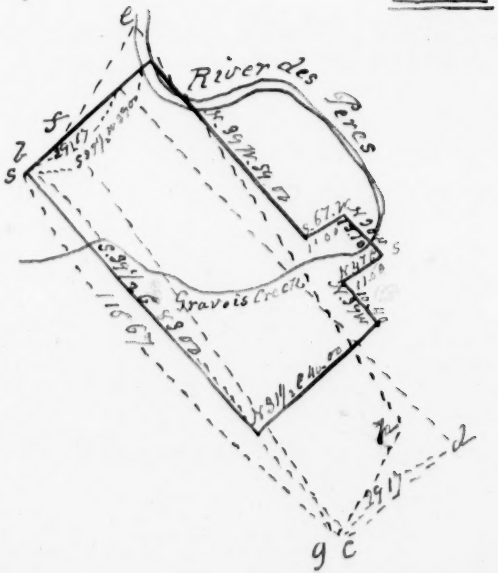
St. Louis, Nov'r 27th, 1812.

PIERRE DELOR $\overset{\text{his}}{\underset{\text{mark.}}{\bowtie}}$ DE TREGET.

Witness: M. P. LEDUC.

See book F, p. 96.

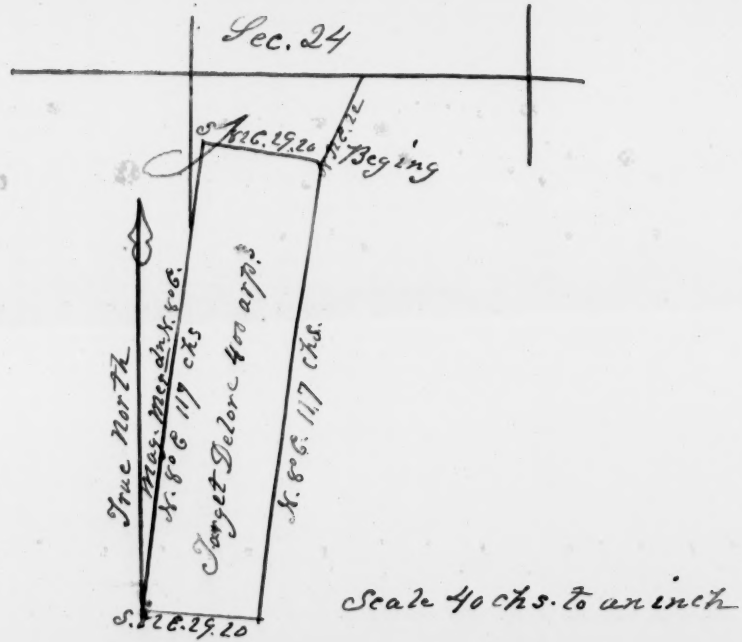
No. 259. page 147



Variation 8° East

Scale 40.00 chains to an inch

No 259 - pa. 149



Scale 40 chs. to an inch

No. 121.

Pierre Delor, claiming 400 arpens.

To Don Zenon Trudeau, Captain in the Stationary Regiment of Louisiana, Lieutenant Governor and Commander-in-chief of the western part of Illinois:

Pierre Delor, captain commanding the militia of the village of Carondelet, supplicates very humbly, and has the honor to represent to you that he would wish to make an establishment near the river aux Gravois, on the road leading from St. Louis et le village de Carondelet to the saline of the Meramec, and having found a place corresponding to his wishes, he claims of your goodness that you will grant to him the concession of the said place, having ten arpens in front by 40 arpens in depth, the said tract being situated at a turn of the said river aux Gravois, on the side of the village of Carondelet, which turn runs for the space of about 10 arpens from east to west, and 40 arpens from north to south. The petitioner, desiring to secure to himself the property of the said tract, has recourse to your goodness, praying that you will be pleased to grant the concession and secure to him the property of the same, by giving him titles in due form, in order that he may, with security, make thereon the improvements required, according to custom, as he wishes to begin to work as soon as you will please grant him the concession.

This considered, may you be pleased, sir, to grant to him the aforesaid concession of 10 arpens in front by 40 arpens in depth, such as it is here above designated.

The petitioner shall never cease to pray Heaven for your conservation.

his
PIERRE ⋈ DELOR.
mark.

ST. LOUIS, *Dec'r 6th*, 1796.

The surveyor of this jurisdiction shall put Mr. Delor de Treget in possession of the land which he asks, in the place and in the shape designated, provided it belongs to the king's domain, and is not prejudicial to any other concession heretofore granted.

ZENON TRUDEAU.

Truly translated.

St. Louis, May 24th, 1833.

JULIUS DE MUNN.

[*For plat see original, page* 149.]

By request, surveyed for Target Delor. According to his showing, an old concession of 10 by 40 arpens, beginning at the northeast corner; thence N. 82 W., 18 chs. 50 lks. to the creek, 29 chs.

20 l., set post the N. W. corner; thence S. 8 W., 4 chs. to the creek, 117 chs. to the S. W. corner; thence S. 82 E., 29 chs. 20 l. to a post, the S. E. corner; thence N. 8 E., 117 chs. to the beginning, and for connections with public lines; thence N. 32 E., 22 chs. to a qr. sec. corner, in the S. boundary of sec. 24, in T. 44 N., and R. 6 east.

JOS. C. BROWN.

May, 1821.

Evidence with reference to Minutes and Records.

April 12th, 1833.

The board met pursuant to adjournment:

Present, F. R. Conway, A. G. Harrison, commissioners.

Pierre Delor, claiming 10 arpens of land in front by 40 arpens in depth, on the river aux Gravois, a special location. See record book F, p. 96; Bates's decision, No. 5, p. 102. Produces a paper purporting to be an original concession from Zenon Trudeau, dated 6th December, 1796; also a plat of survey dated May, 1821, by Jos. C. Brown.

John Boli, duly sworn, says that he was present when Jos. C. Brown surveyed a tract of land for Pierre Delor, on river aux Gravois; that near the main road he was several times shown a tree, said to be the corners of said land, as before surveyed, and that in running the lines he saw trees marked with old blazes, and he heard of said Delor and others; that these old lines were run by Bouvet, who was commissioned surveyor at the date of the concession; that said Delor was a Spanish officer, and acted as commandant at his father's decease, and he (the deponent) served under him.

See book No. 6, page 154.

April 17th, 1833.

The board met pursuant to adjournment:

Present, A. G. Harrison, F. R. Conway, commissioners.

In the case of Pierre Delor, claiming 10 by 40 arpens of land. See p. 154 of this book.

Joseph C. Brown, duly sworn, says that he made the survey of the land above mentioned; that John Boli was along with several other neighbors for the purpose, he thinks, of showing the land as claimed by the proprietor.

See book No. 6, p. 156.

Nov. 13th, 1833.

The board met pursuant to adjournment:

Present, L. F. Linn, A. G. Harrison, F. R. Conway, comm'rs.

Pierre Delor, claiming 400 arpens of land.

See p. 156 of this book.

The board are unanimously of opinion this claim ought to be confirmed to the said Pierre Delor, or to his legal reps., according to the concession.

A. G. HARRISON,
L. F. LINN,
F. R. CONWAY.

See book No. 6, page 325.

RECORDER'S OFFICE,
St. Louis, Missouri, 19th Dec'r, 1839.

I certify that the foregoing mentioned and described claim to a tract of land of 400 arpens, in the name of Pierre Delor or his legal reps., was recommended for confirmation by the late board of comm'rs, decision No. 121, and that the same is duly confirmed by the act of Congress entitled "An act confirming claims to land in the State of Missouri, and for other purposes," approved the 4th of July, 1836.

F. R. CONWAY,
U. S. Recorder of Land Titles in the State of Missouri.

To WM. MILBURN, Esq.,
Surveyor General of Ill's and Mo., St. Louis.

"A, No. 27." Q.

J. B. Martigny's Claim.

No. 170. Jean Baptiste Martigny, claiming 12 arpens front.

Don Francisco Cruzat, Lieut. Colonel of Infantry by brevet, Commander-in-chief and Lieut. Gov. of the western part and district of Ill's:

Having taken cognizance of the memorial dated April 23d, of this current year, presented by Don Juan Baptiste Martigny, captain of militia in this town of St. Louis, I have granted to the said Don Juan Baptiste Martigny in fee simple, for him, his heirs, or others who may represent his right, the twelve arpens from hill to hill, in front, in order that he may raise cattle, as he solicits, on the borders of the Mississippi, on the river called Decadre, on condition to improve the plantation he asks for, and to be liable to public taxes, and others which it may please his majesty to impose; and on the contrary, the land shall be incorporated to the royal domain.

Given in St. Louis, April 25th, 1783.

FRANCIS CRUZAT,
JULIUS DE MUN.

Truly translated from Livre Terrien, No. 4, p. 7.
St. Louis, August 3d, 1833.

Evidence with reference to Minutes and Records.

July 8th, 1833.

L. F. Linn, esq., appeared pursuant to adjournment.

Jean Baptiste Martigny, by his legal representatives, claiming twelve arpens in front (a special location), by the ordinary depth.

See book F, p. 191.

Recorder's Minutes, p. 151, Livre Terrien No. 4, p. 7.

Peter Chouteau, sen., duly sworn, says, that said Martigny had a house on said land, and lived there 4 or 5 years; that he had a corn-field and garden, and had the place under cultivation till he sold it.

See minutes, No. 6, p. 219.

Oct. 14th, 1834.

The board met pursuant to adjournment: Present, F. R. Conway, J. S. Mayfield, and J. H. Relfe, commissioners.

Jean Baptiste Martigny, claiming 12 arpens of land in front.

See book No. 6, p. 219.

The board are unanimously of opinion that this claim ought to be confirmed to the said Jean Baptiste Martigny, or to his legal rep's, according to the concession.

JAMES S. MAYFIELD,
JAMES H. RELFE,
F. R. CONWAY.

See book No. 7, p. 37.

RECORDER'S OFFICE, ST. LOUIS, MISSOURI,
May 1*st*, 1837.

I certify that the foregoing mentioned and described tract of land of 12 arpens front, in the name of Jean Baptiste Martigny, was recommended for confirmation by the late board of comm'rs—decision No. 170—and that the same is duly confirmed by the act of Congress entitled "An act confirming claims to land in the State of Missouri, and for other purposes," approved the 4th of July, 1836.

F. R. CONWAY,
U. S. Recorder of Land Titles
in the State of Missouri.

To DANIEL DUNKLIN, Esq.,
U. S. Surveyor of Public Lands,
St. Louis, Missouri.

"A, No. 27." R.

Sophia Bolage's Claim.

No. 279. Sophia Bolage, claiming 150 acres.

To Don Zenon Trudeau, Lieut. Col. of the Stationary Regiment of Louisiana, Lieut. Gov'r and Commander-in-chief of the western part of Ill's:

SIR: Sophia Bolage, residing in the village of Carondelet, has the honor to represent, that she had begun to clear a piece of land in order to build a house and make a plantation, on a tract situated on river aux Gravois, between Maramec and the village of St. Louis; that she had all the timber prepared for a house, and even began a field, but having been *frighted* by the reports which have gone abroad, of the bad intentions of the Indians, she then retired with her family to the village of Carondelet. Now she would wish to return and settle with her family upon the said plantation; therefore, she claims of your goodness that you will please grant her a concession of 10 arpens in front at the distance of half a league from the junction of said river aux Gravois with river des Peres; the said ten arpens ascending in a straight line, five arpens on each side the said river aux Gravois, the length of 15 arpens, which will make the quantity of one hundred and fifty arpens of land in superficie. She only waits for your decision in order to go and settle herself on said place, and to work thereon with security, and continue the improvements already begun.

This being considered, may it please you, sir, to grant the petitioner, at the distance of half a league from the mouth of said river aux Gravois, the quantity of ten arpens, five on each side of said river, by 15 in depth, in ascending the said river in a straight line.

The petitioner shall never cease to pray for your conservation.

her
SOPHIA ⋈ BOLAGE.
mark,
(not knowing how to sign.)

St. Louis, 28th June, 1796.

ST. LOUIS, *June 3d*, 1796.

In case that the land asked for belongs to the king's domain, the surveyor of this jurisdiction shall put the petitioner in possession of the quantity of arpens she asks, in the manner designated, in order to deliver to her the concession in form, after the plat and certificate of survey are made out.

TRADEAU.

ST. LOUIS, *May 25th*, 1835.

Truly translated from the original, filed before the board of comm'rs.

JULIUS DE MUN, *T. B. C.*

Evidence with reference to Minutes and Records.

May 14th, 1835.

The board met pursuant to adjournment: Present, F. R. Conway, J. H. Relfe, commissioners. Sophia Bolage, claiming 150 arpens of land situate on river Gravois. See record-book E, p. 327—Bates's decisions, p. 91.

Produces a paper purporting to be an original concession from Zenon Trudeau, dated 3d June, 1796; also the deposition of Philip Fine, taken the 13th August, 1819, before Joseph Charless, J. P.

M. P. Leduc, duly sworn, says that the signature to the concession or order of survey is in the proper handwriting of the said Trudeau.

TERRITORY OF MISSOURI,
County of St. Louis.

Philip Fine, of the township of St. Louis, in said county, being duly sworn, upon his oath declares and says, that he well knows the tract described in the annexed petition of Sophia Bolage, and has known it for at least 40 years past; and that Sophia Bolage, about 30 years ago, opened the ground, planted corn and potatoes, and built a house on said tract.

his
PHILIP ⋈ FINE.
mark.

Sworn to and subscribed this 13th day of August, 1819, before me, a justice of the peace in and for the county aforesaid.

JOSEPH CHARLESS, *J. P.*

See book No. 7, p. 152.

June 10th, 1835.

The board met pursuant to adjournment:
Present, J. H. Relfe, F. R. Conway, comm'rs.
Sophia Bolage, claiming 150 arpens of land.
See book No. 7, p. 152.

The board are of opinion that this claim ought to be confirmed to the said Sophia Bolage, or to her legal rep's, provided the land belonged to the domain at the date of the concession.

JAMES H. RELFE,
F. R. CONWAY.

See book No. 7, p. 167.

I have examined the transcript of the above claim, and concur in the decision.

F. H. MARTIN.

RECORDER'S OFFICE,
St. Louis, Missouri, March 20th, 1837.

I certify that the foregoing mentioned and described tract of land of 150 arpens, in the name of Sophia Bolage, now claimed by her legal representatives, was recommended for confirmation by the late board of commissioners, decision No. 279, and the same is duly confirmed by the act of Congress entitled "An act confirming claims to land in the State of Missouri, and for other purposes," approved the 4th of July, 1836.

F. R. CONWAY,
U. S. Recorder of Land Titles
in the State of Missouri.

To DAVID DUNKLIN, Esq.,
U. S. Surveyor of Pub. Lands,
St. Louis, Missouri.

"A, No. 28." S.

Eugenio Alvarez's Claim.

Eugenio Alvarez claims to hold 640 arpens of land, situate on the river des Peres, in the district of St. Louis, by virtue of concession to him granted by Zenon Trudeau on the 18th day of Nov., 1796, and recorded on a book *November* 1, folio 28 and 29, lodged in the office of the recorder of land claims, by virtue of having actually inhabited and cultivated said concession.

St. Louis, August 12th, 1807.

EUG'E ALVAREZ.

See book C, p. 508.

Statement.—Eugenio Alvarez claims 640 arpens of land, situate on river des Peres, district of St. Louis, by virtue of a concession granted to him by Zenon Trudeau Nov. 18th, 1796.

Petition.

To the lieutenant governor, Eugene Alvarez, a citizen residing in this town of St. Louis, with due respect, and in the best form that may be, has the honor to state, that wishing to establish an habitation for the purpose of raising cattle, and occupying himself in agriculture, he wants to have the quantity of land needed for his projects. Therefore he humbly supplicates your lordship to grant to him a fee simple, the vacant land lying from the limits of the land of Carondelet to those of Mr. Reilhe, which he thinks will be about six arpens in front, facing the river des Peres, by 40 in depth, and on the opposite side of said river ten arpens wide, departing from the same limits of Carondelet and ending at the

lands of the domain. The whole not to be prejudicial to anybody. Said land to remain subject to all the charges decreed by law. Favor that the petitioner hopes to deserve from your justice.

Saint Louis of Illinois, 15th of November, 1796.

EUGENE ALVAREZ.

Decree of Concession.

ST. LOUIS, 18*th Nov.*, 1796.

The surveyor, Don Ant'e Soulard, shall establish the petitioner upon the land asked for, and subsequently thereto he shall execute the survey of said land, in order that the title in form of the concession thereof may be expedited.

ZENON TRUDEAU.

Registered in the book of petitions, decrees, and titles of concessions, No. 1, fos. 28 and 29.

SOULARD.

T.

Proceed'gs of Board on Eugenio Alvarez's Claim.

Wednesday, August 8th, 1810.

Board met: Present, John B. C. Lucas, Clement B. Penrose, Frederick Bates, commissioners.

On special application of Eugenio Alvarez, and he having shown sufficient cause, he is permitted to introduce testimony in the following claim, to wit: Eugenio Alvarez, claiming 640 arpens of land, situate on the river des Peres, in the district of St. Louis, produces to the board a concession from Don Zenon Trudeau, lieut. governor, to the said Alvarez, dated the 18th November, 1796, for a certain space between the establishment of Carondelet and that of Mr. Reilhe, estimated to be six arpens in front and 40 arpens in depth, and on the opposite of the river, 10 arpens in front and forty in depth.

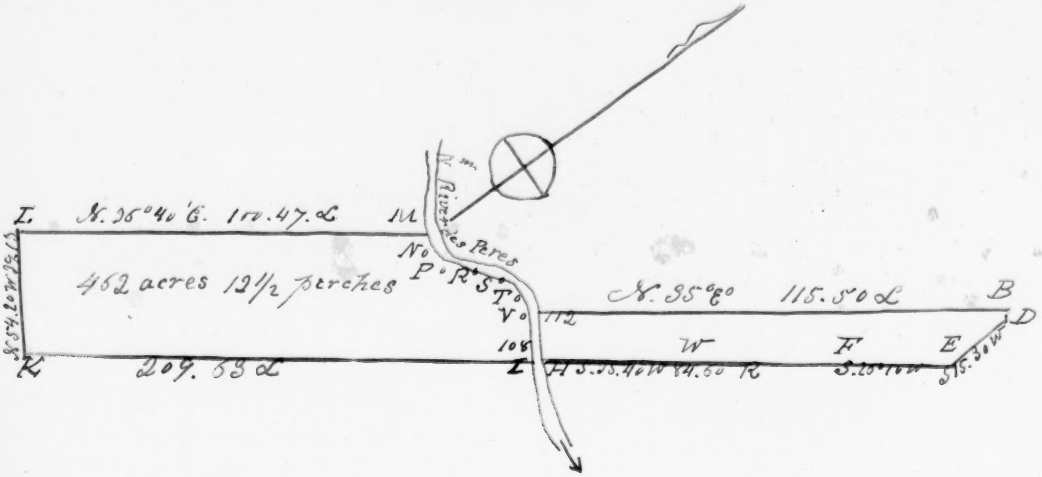
Jean Baptiste Chattillon, being duly sworn, says, that in the year 1798 or 1799, he (witness) built a cabin, and enclosed about three arpens of land, for the claimant, and that claimant sowed tobacco seed in the month of April of the same year on the land claimed.

Alexander Grimeau, being also duly sworn, says that claimant inhabited and cultivated the land claimed in 1798 or 1799; that he, the deponent, was sent at that time by the lieut. governor, Zenon Trudeau, to inform said Alvarez, who was then inhabiting said land, that he had been appointed keeper of the public stores, and required him to remove to St. Louis and attend to his said office.

The board order that this claim be surveyed conformably to the

N°259 - pa: 155

U


I
N. 35° 40' E. 111.47 ℒ
M
N°
P°
R°
S°
T°
V°
Rio Arriba
Rio Pedernales
462 acres 12½ perches
N. 55° E 115.50 ℒ
B
D
112
105
W
F
E
K
209.33 ℒ
L
H
S. 55. 40 W 84.80 R
S. 20° 10 W
S 15. 30 W

above mentioned concession, and that the survey be returned within 15 days from this day.

Board adjourned till to-morrow, 3 o'clock a. m.

JOHN B. C. LUCAS,
CLEMENT B. PENROSE,
FREDERICK BATES.

See minutes, book No. 4, pages 458 and 459.

Monday, January 6th, 1812.

Board met: Present, John B. C. Lucas, Clement B. Penrose, Frederick Bates, commissioners.

Cer. 1,339. Eugenio Alvarez. See book No. 4, page 458.

The boards confirm to Eugenio Alvarez four hundred and sixty-two acres, one hundred and twenty-nine perches of land, as described in a plat of survey returned by Silas Bent, principal deputy surveyor, dated 22d and 23d of Nov., 1811, on file with the recorder.

Board adjourned till Thursday next, nine o'clock a. m.

JOHN B. C. LUCAS,
CLEMENT B. PENROSE,
FREDERICK BATES.

See minutes, book No. 5, pages 553, 554, and 555.

RECORDER'S OFFICE, *St. Louis*, *Missouri*, 23 *Dec.*, 1839.

The foregoing is truly transcribed from the minutes of the proceedings of the board of commissioners for ascertaining and adjusting the titles and claims to lands, as now appears of record in this office.

F. R. CONWAY,
U. S. Recorder of Land Titles in the State of Missouri.

E. Alvarez's Claim surveyed by Russell.

[For plat marked U, see original, page 155.]

Eugenio Alvarez: surveyed as represented by the above plat; situate in the district of St. Louis, Territory of Louisiana, on river des Peres, (as said river is represented therein,) which river averages $110\frac{50}{100}$ links wide; the survey being bounded from M to V by the southern shore thereof; (the land on the opposite and northern shore, said to be claimed under right of Antoine Reylh;) from A to B by the aforesaid land claimed under right of Ant. Reylh; from B to D by public lands, or claimant unknown; from D to E, and to F, and to W, by common-field lands of the village of Carondelet; (which common-field lands are divided amongst the several individuals possessing the same, by known and marked boundaries, held as individual and not common property, most of which lands,

it is said, have not been recorded or claimed before the board of commissioners, though they have been cultivated and possessed by the several individuals, it is said, since the first settlement of the country; the particulars from the best information are therefore stated, without stating whether this line from D to W bound on private claims (when in fact they are not claimed) or on public lands; from W to K by lands claimed by the inhabitants of Carondelet as a common property, the boundary line of which has been marked apparently about 14 or 15 years ago, to the northern bank of the river des Peres at H, and no further; from K to L by land said to belong to the heirs of a widow Boly, though no claim recorded, and is therefore in the same situation of the lands bounding this survey; from D to W, (may be public lands;) from L to M, I presumed, when I made this survey, to be bounded by public lands, but have since been informed that Mr. Sarpy has a claim of considerable size there, with which (if there is such claim) I now presume this survey will interfere, which fact may be ascertained by those who are in possession of the record (if any) of Mr. Sarpy's survey, the garret window of Mr. Sarpy's mill being N. 38° 30 W. from the sycamore, witness to corner M, and not more than 10 chains distance (at farthest) from that corner, suspecting no interference, having no inducements; and the mill being on the opposite side of the river, the exact distance was not measured to the mill, and the course taken without any particular motive.

No former lines were discovered by me south of the river des Peres.

The above survey was begun on the 22d and finished on the 23d day of November, 1811, in pursuance of the several orders of the board of comm'rs to that effect.

The compass adjusted to the true meridian: the chain (as nearly as practicable) carried horizontal by George Shoultz and Jacob Brennet, sworn chain carriers: plated to a scale of 40 chains (equal to 180 perches) to an inch.

Field-notes, to wit: Beginning at a stone corner at the root of a white oak tree, 27 inches in dia., marked on the E. side ll A, being on the bank of a spring branch, and 87 links N. E. from the river des Peres, at the place called Morgan's ford; which stone and white oak tree (to wit,) at corner A, is said to be the boundary line of a tract of land originally claimed by Ante. Reyth, witness stations, to wit: a large spring N. 46° 15 W. 67 links, white oak 28 inches in dia., N. 17 E. 85 links; thence from the said place of beginning (as described) N. 35 E. 15.00 links to a stone on the aforesaid Reyhl's, marked line 25.00 links to the bottom of a deep cinque nole; 26.20 links to a white oak 23 inches in dia.; 34.64 links to a white oak 21 inches in dia. To this station the land is not rich, and very much broken with cinque holes; has been tolerably well timbered with white oak, black oak, post-oak,

black jack, and hickory, a few of which yet remains, 45.20 l. to a white oak 41 inches in dia.; 69.76 to the top of a ridge timbered with a few scattering shrubby hickories and post-oaks; land of tolerable second-rate quality, (admitting three qualities of high land.) To this section the aforesaid line of Reilh is remarkably well marked, in part with stones, and on trees, where any are near the line, which marks on trees appear to have been made at least 15 years ago, 115.50 links to a stone, corner at B. Rielh's marked line found until within 40.00 links of this corner, witness trees, a persimmon tree 2½ inches in diameter, S. 41 E., 200 links, marked on S. side E., a black jack ten inches in dia., N. 45° 40′ E., 170 links, land inferior to 2d quality; timber, a few scattering shrubby post-oaks, blak jacks and hickories. Thence S. 55° E., 3.91 to a stone, corner at D on rear line of common-field lands of Carondelet village, being on the rear part of the lot of Gabriel Constant, sen'r., in said field, witness trees, the said aforesaid persimmon tree 2½ inches in dia., N. 68 30 W., 20.5 links, and the same last aforesaid black jack 10 inches in diameter, N. 33 15 W., 3.70 links; thence S. 15 30 W., with the rear line of Carondelet common-field 7.47 links to a stone, 11.60 links to a stone, 15.75 links to a stone, corner at E; thence S. 26 10 W., 17.50 links to a stone, corner at F; thence S. 35 40 W., (still with the rear line of said fields as marked with stones,) 26.10 to a stone, at W. From D to W there is but very few scattering shrubs of timber; land is tolerably second quality of high land, (it is said one arpent and a half southward of this station at W is a part of the common-field lands, and owned by a widow Roandat, the rear southward corner of which is not to be found, from the place of which corner, or where it ought to be, commences a tract of land claimed by the inhabitants of Carondelet as a common property,) 84.60 links to a stone H, on the bank of the river des Peres; land lightly timbered with remnant of black oak, white oak, post-oak, black jack and hickory, not rich, and broken with cinques in part, and in part inclinable to be wet and spouty, 89.60 links to a stone, now set on the south bank of the river des Peres at I, the river being 109 links wide, 96.69 links to top of first rising ground; timber from river to this station Spanish oak, elm, lynn, ash and hickory; 209.63 links, to a stone, corner at K, about 200 links N. of a small fork of Grave creek; witness trees, white oak 30 inches in dia., S. 57 E., 32 links, another white oak 30 inche in dia. N. 37 10 W., 80 links from last station, on top of fine rising ground; S. of river at a distance of 14 chs. towards this course is open, level, and tolerably rich highland prairie; the land then becomes poor, and somewhat broken with drains and cinques, with some few scattering shrubs of white oak, hickory and black jack, and continuing so until within 10.00 links of the present corner at K, which last 10.00 links is some better timber, Spanish

oak, black oak, white oak, &c., the drains emptying into Grave creek. Tho' the inhabitants of Carondelet claim to this line as the boundary of their common, no ancient mark like a line has been found, any further than to H. Their claim extends, it is said, considerably further to the southward (in the direction of this line) than this corner at K; thence N. 45 20 W., 15.20 links to a white oak 10 inches in dia., 29.13 links to a stone, corner at L; witness trees, white oak 17 inches in diameter, S. 52 W., 13 links; black oak 9 inches in dia. marked EA, N. 43 E., 151 links; land on this line not rich, lightly timbered with white oak, black oak, black jack, post-oak and hickory. Thence N. 35 40. E, 170 links to hickory 4 inches in dia., 29.00 links, to a stone on S. hill-side; 39.79 links to hickory 4 inches in dia., 51.50 links to the top of a ridge, 90.00 links to a stone on a flat of high land, 100.47 links to a stone, corner at M, on the S. bank of the river des Peres; witness trees, blue ash 9 inches in dia., N. 14 E., 34 lk's, sycamore 18 inches in dia., N. 65 E., 31 links. The land from L to M is mostly poor, and broken with cinques and drains, timbered with a few shrubby post-oaks, black jacks and hickories. Thence down the meanders of the river des Peres, on the S. E. bank thereof, as follows: S. 45 20 E., 8.20 links to N.; N. 70 E., 3.00 links to P; N. 18 E., 8.50 links to R; N. 34 E., 7.00 links to S.; S. 63 E., 6.00 links to T; N. 85 40 E., 7.00 links to a double elm at V; witness tree, sycamore 36 inches in dia., S. 1 30 E., 20 links, marked FA. Thence N. 35 E., 1.89 links, to the white oak and stone, beginning corner, at A, crossing the river des Peres, which is 112 links wide.

The river as meandered is tolerably rich land, bottom narrow, perhaps in no place exceeding six chains wide, timbered with sycamore, Spanish oak, ash, elm, lynn, red-bud, &c.; undergrowth, briers and grape-vines.

Which survey contains four hundred and sixty-two acres twelve and a half perches, one hundred and twenty acres 147½ perches of which lies on the northeastward side of the river des Peres, three hundred and forty acres and nine perches on the southwestward side of that river, and one acre sixteen perches of the river des Peres itself, which is included within the survey.

Nov'r 24th, 1811. WILLIAM RUSSELL, *D. S.*

Examined and approved.

SILAS BENT, *S. D. S.*

Old Spanish Survey.

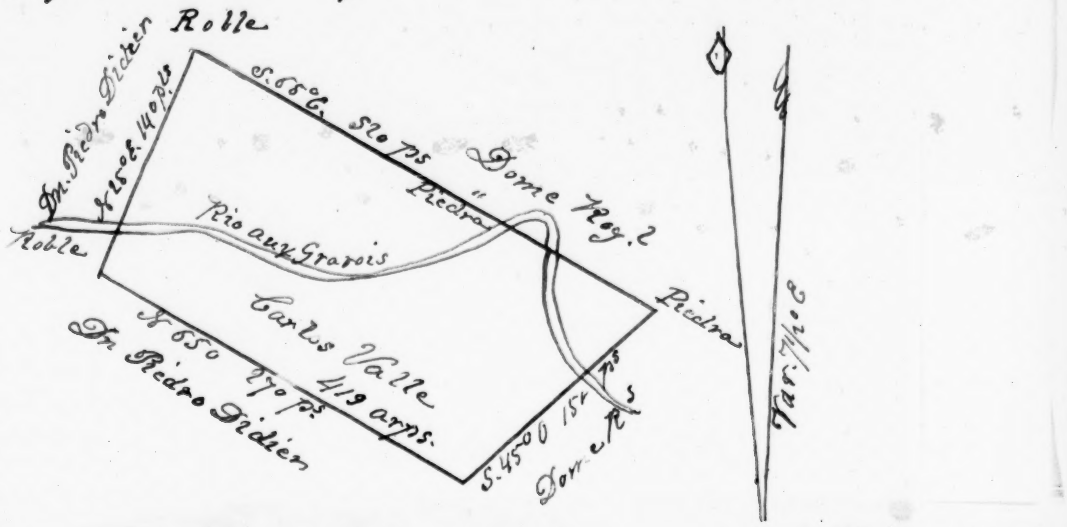
[For plat marked V see original, page 158.]

Colgan Claim under Valle.

John Collgan, as assignee of Jean Baptiste Royol, ex'r and adm'r to the estate of Carlos Valle, dec'd, claims to hold under the 2d section of the act of Congress, arpens of land, situate on the river aux Gravois, district of St. Louis.

No 259. page 158

V



To Don Zenon Trudeau, Captain in the Stationary Regiment of Louisiana, Lt. Governor and Commander-in-chief of Illinois:

SIR: The petitioner has the honor to state to you, that two years ago he had formed an establishment on river Gravois; therefore he prays you to be pleased to grant to him 15 arpens wide for 40 deep; the limit thereof to be taken at the limit of the village of Carondelet. The petitioner dares to hope that you will accede to his demand.

He shall never cease to pray for your welfare.

St. Louis, the 11th April, 1797.

CHARLES VALLE.

The surveyor of this district shall put the petitioner in possession of four hundred arpens of land in superficie, at the place where he asks, as far as it is vacant, and the conceding thereof is not prejudicial to anybody.

ZENON TRUDEAU.

St. Louis, 11th of April, 1797.

Survey.

Note to survey.—Bounds were set to the four corners, and posts on the lines at the distance of 20 arpens, between each respectively. They all shown on the above plat. All the trees on the lines were marked with one blaze above two notches, and the trees on both sides of the lines were blazed only.

Registered in book B, of the surveys for said post (St. Louis,) folio 12, No. 16.

UPPER LOUISIANA,
District of St. Louis of Illinois.

I, Don Antonio Soulard, special surveyor of Upper Louisiana, do certify, that a tract of 413 arpens of land was, in presence and in favor of Charles Valle, measured and bounded *measured and bounded* with the perch of the city of Paris, eighteen feet of the same in length, agreeably to the author of surveying lands in this province. The land is situated upon the river named Gravois, distant nine miles (in the S. W.) from St. Louis, bounded on the N. N. E. and S. S. E. by vacant lands of the royal domain, and on the S. S. W. and W. N. W. by lands belonging to Peter Didier; said survey and measurement were executed without regard to the variation of the needle, which is 7 degrees and 30 minutes east, as appears from the foregoing plat, on which the lengths and courses of the lines and other limits, &c., are laid down.

This survey was made in pursuance of the petition (of Charles Valle,) and decree thereon of the lieut. gov., Don Zenon Trudeau, dated the 11th of April, 1797, and in order that it may be available, I do give the present certificate, together with the foregoing plat drawn in conformity with the returns of the deputy surveyor,

James Mackay, dated the 17th of April, 1803, who signed the minutes to which I certify, in St. Louis of Ill., the 21st of August, 1803.

ANTONIO SOULARD, *Sp'l Surveyor.*

Plat by Brown—"X."

T. 43 & 44 N., R's 6 & 7 E., of 5th P'l Meridian.

[*For plat marked X, see original, page* 160.]

Remarks on Brown's Plat by General Milburn.

It will be seen by the plat D, that Elias Rector reports the west boundary of the common to be 437.50 chains, which is equal to 150 arpens, whilst the said line according to Mr. Brown's operations, as represented on this plat, is 473.17 chains, (being 201.36 chains with Alvarez's line, and 271.81 ch's beyond Alvarez,) which exceeds the 150 arp's by 35.67 chs., or something more than 12 arpens. The line A B on this plat is drawn 150 arpens from the fields lands, according to Brown's measure, and cuts off about 1,170 acres.

The copy of the instructions to Mr. Brown, marked F, shows that he was not required to run the distance of 150 arpens on the W. boundary, but to connect the lines of the common as already surveyed with the adjoining public and private surveys, and if the S. W. corner could not be found, to re-establish it at the intersection of the southern and western boundary lines. The S. W. corner, and the lower corner on the river, also the western and southern boundary lines as surveyed by Elias Rector, were easily found and identified by Mr. Brown.

Under the act of Congress of the 26th of May, 1824, supplemental to the law of the 13th June, 1812, the rep's of John B. Gamache, who had been denied a concession south of the common-fields by Govr. Trudeau, availed themselves *by* the very liberal practice of the recorder, under the said act of 1824, and claimed a portion of the same land refused by Trudeau, as an out-lot adjoining the village of Carondelet, containing 6 arpens in front, by 40 in depth, bounded northwardly by the common-field, eastwardly by the Mississippi (leaving a tow between it and the river,) south by an out-lot claimed by the legal rep's of Gabriel Constant (Salmond) senr., and west by the land formerly the property of Antoine Reilh, and they proved the land, as above designated, to have been inhabited, cultivated and possessed as required by the said acts of 1812 and 1824.

This claim of Gamache, under the laws of 1812 and 1824, has been surveyed as represented on this map by black dotted lines.

Under an act of the legislature of the State of Missouri, passed in pursuance of the act of Congress approved the 27th of Jan'y,

1831, the corporate authorities of the town of Carondelet laid off into small tracts the land within Brown's survey of the Carondelet common (except a portion around Jefferson Barracks,) and disposed of the same, or the greater part thereof, to private individuals.

WILLIAM MILBURN,
Surveyor of the Public Lands in the States of Illinois and Missouri.

Surveyor's Office, St. Louis, 15th April, 1840.

Y.

Beverly Allen's Argument in reply to Genl. Milburn.

To Genl. Wm. Milburn, Sur. Genl. of U. S., St. Louis, Mo.

St. Louis, Mo.

In compliance with your letter of 5th Decr., '39, accompanied by copy of letter from the Commr. of the Genl. Land Office, dated 24th Septr., '39, and the opinion of the Solictor of the Treasury, "in relation to the land embraced in the survey of the Carondelet commons, south of the river des Peres," we now submit for your consideration the information we have collected and which we think bears on the subject.

The information consists of the following documents, law, and testimony:

1st. The petition of J. B. Gamache, dated 6th Decr., 1796, to Zenon Trudeau, lieut. govr. of Upper Louisiania, the order of the lieut. govr. thereon, dated 7th of same month, and the certificates of Antoine Soulard, sur. genl. of Upper Louisiana, dated 25th Decr., 1797, and 18 Feby., 1806.

2d. The proceedings of the board of commissioners of land claims in the claim of the inhabitants of Carondelet to commons.

3d. The act of Congress of 13th June, 1812.

4th. The certificate of confirmation of their claim to commons, issued by U. S. recorder of land titles at St. Louis, Mo.

5th. The surveys and field-notes of the commons as certified by sur. genl., one of which surveys was made in by E. Rector, a deputy sur. of the U. S.; the other by Jos. C. Brown, another depy. surveyor, in the year 1834.

6. The plats of said surveys.

7. The concession to Eugene Alvarez, dated 18th Nov., 1796, for 64 arpens, proceedings thereon before b'd of comm'rs of land claims.

8. The concession to Gabriel Coustant, dated 4th Sept., 1795, for 35 arps., proceedings thereon before b'd of comm'rs of land claims.

9. The concession to Gabriel Cerré, dated 15th March, 1789, for

10 by 40 arps., and proceedings thereon before b'd of comm'rs of land claims.

10. The concession to Sophia Bolage, dated 3d June, 1796, for 150 arps., and proceedings thereon before b'd of comm'rs of land claims.

11. The claim of Julien Chouquette, for 640 acres, and proceedings thereon before b'd of comm'rs of land claims.

12. The concession to Pierre Delor, dated 6th Decr., 1796, for 10 by 40 arps., and proceedings thereon before b'd of comm'rs of land claims.

13. The concession to Jean B. Martigny, dated 25th April, 1783, for 12 arps. by ordinary depth, and proceedings thereon before b'd of comm'rs of land claims.

14. The affidavits of Marie P. Leduc, Jos. Charleville, Hyacinth Pigeon, George Shoultz, Peter Delor, Louis Courtois and Jonah Parke.

On the foregoing documents, law, and testimony, the inhabitants of Carondelet would submit the following view of their claim to commons.

The basis of their claim is the order of Zenon Trudeau, on petition of J. B. Gamache.

This order is dated 7th Dec'r, 1796. Gamache asks in his petition for a tract of land, &c. The lieut. gov'r, Trudeau, says in the order on that petition, "that the land asked for is included in what has been reserved for the supply of the necessary wood to the village of Carondelet, and the demand made by Gamache cannot take place, as also all concessions granted in the direction of the line taken at the end of the lands of the said village, and running parallel with the Mississippi, 150 arpens lower down."

It is supposed and insisted, that by "the lands of the said village" is meant their common-fields.

It appears from the official certificate of Soulard, sur. gen'l of Upper Lou'a, dated 25th Dec'r, 1797, that this line of one hundred and fifty arpens had been attempted to be run, and was run, commencing from the lands of the villagers, south to the river des Peres, and there the survey was arrested. The words of the official certif'e do not convey the idea that the river was the end of the line, but that he surveyed no further southward. The certificate of the surveyor is, that the inhabitants were enjoined to make known the line of a tract of land which had been granted to them, under date of 7th December, 1796; that they have agreed to have their line drawn to be taken from, &c.; then proceeds with this language: "Having ascertained the courses of the same lands, I found that their courses were S. 28 W. I followed the same courses 23 arpens 3½ perches, at which distance I found the river des Peres; the end of the line on the border of said river has been marked," &c.

This language shows that the 150 arpens were not run as required in the order of 7th Dec'r, 1796, and that the marking the line on the river was merely to show where it struck the river; and in confirmation of this, the further certificate of the surveyor, dated 18th Feb'y, 1806, is appealed to, for if the survey mentioned in the first certificate was a full survey of the commons, it would seem to be necessary to have a further survey. The certificate implies a part was yet to be surveyed.

It will be remarked that this petition and order, and these certificates, were filed, recorded in the office of the U. S. recorder, previous to June, 1808.

On 7th June, 1808, the inhabitants of Carondelet lay in their claim to six thousand arpens of land, as commons, adjoining village of Carondelet, by virtue of said order of 7th Dec'r, 1796, before board of comm'rs of land claims.

The proceedings before the board on this claim closed 21 Jan'y, 1812.

The existence of a common attached to Carondelet is proven by the testimony before them, but there is no evidence of its extent, other than the order of the lieut. gov'r and the certificates of surveyor aforesaid.

The decision of the comm'rs on this claim was unfavorable. The proceedings of the comm'rs on this claim and their decision were by them reported to Secretary of Treasury, 20th Jan'y, 1812.

See Am. State Papers, Pub. Lands, vol. 2.

Congress on the 13th of June, 1812, confirmed to the inhabitants of Carondelet their claim to commons.

It may be asked, what claim? Certainly none other than the above, for of no other had Congress any knowledge.

It is not to be supposed they confirmed a claim of which they had no knowledge. Having then by that act confirmed the claim, it must be intended the claim of which notice was given to the b'd of comm'rs as aforesaid, and that claim was to run from the S. W. corner of the common-fields, parallel with the Mississippi river one hundred and fifty arpens lower down. Pursuant to such confirmation the claim has been surveyed by the U. S. surveyor, and a patent certificate issued by the U. S. recorder of land titles. In the field-notes of Brown's survey he speaks of the old line of the survey, of stones long set up in the line, and particularly at the S. W. and S. E. corners of the survey.

It is true that the survey includes more than 6,000 arpens; but this can avail nothing, as the courses and distances will, agreeably to a well established principle of law, control quantity, and unless it can be shown that the courses and distances have not been observed, the right of the inhabitants of Carondelet to the whole survey, it is submitted, cannot be impeached.

But it is said by the Solicitor of the Treasury that the six concessions lying within Brown's survey of the common, and south of the river des Peres, furnish evidence that the land in question (that plat of commons south of river des Peres) was not regarded by the Spanish officers as parcel of the village commons, because they were all forbidden to grant village commons, and the legal presumption is that they obeyed the instruction, and that therefore this land was not a common, but public domain.

The letter of Solicitor of 6th August, 1839.

With due respect to the Solicitor, we submit the following remarks on these six claims, referred to by him.

According to the surveys in the office of the U. S. surveyor, there are only five claims south of the river des Peres, and within Brown's survey of the commons; perhaps between Alvarez's claim, which adjoins the commons, and is south of the river, or the claim of Gabriel Constant, which might at first glance be mistaken as lying south of the river des Peres, is intended as one of the six.

We will, however, show that none of the seven claims named, interfere with the right to common south of the river des Peres.

We observe on the seven claims mentioned as follows:

1st. Eugenio Alvarez. The concession in favor of Alvarez was made on 18th Nov., 1796, nearly one month before Trudeau's grant of commons; of course there was in this concession to Alvarez no grant to an individual of part of commons; at date of his concession it was part of the public domain, and so no violation of the law that commons could not be granted to individuals.

This land, however, is without the commons, and being made before the grant of commons, its silence as to commons furnishes no argument against the right and title to the commons.

It may, however, be observed in passing, that the U. S. deputy surveyor, who surveyed this claim of Alvarez in 1811, under order of board of comm'rs, says, in his returns, that at that time the inhabitants of Carondelet laid claim to commons south of the river des Peres.

2. Gabriel Constant. The concession in favor of Constant was made on *on* 4th Sept., 1795, more than one year before the grant of commons, and is therefore no evidence that the commons granted one year and more thereafter did not extend south of the river des Peres.

But this claim is north of the river des Peres, and would, according to the view of the Solicitor, furnish evidence that the inhabitants of Carondelet had no right to common north of the river des Peres, which, however, we suppose is not insisted on by him.

This claim of Constant was surveyed in April, 1796, about nine months before the grant of commons.

3d. Gabriel Cerré. The concession in favor of Cerré was made

15th March, 1789, and lies south of the river des Peres, and within the survey of the commons made by Brown.

It will not be pretended that this grant, dated 15th March, 1789, is conclusive or persuasive evidence that land at that date a part of the public domain was not granted as commons on 7th Dec'r, 1796, seven years and eight months subsequent.

A comparison of dates will exclude all conclusion against the right to commons.

4. Sophia Bolage. The concession in favor of Sophia Bolage was made on the third June, 1796. This was six months before the grant of commons, and so no evidence that the commons subsequently granted did not extend south of river des Peres.

5. Julien Chouquette. This, so far from being a concession, is a claim under act of Congress of 3d May, 1807, 2d section, and based on actual possession, and was confirmed by com'rs in 1810; thence not within the grounds taken by the Solicitor.

6th. Pierre Delor. The concession in favor of Pierre Delor was made on 6th Dec'r, 1796, the day before the grant of commons. In this concession to Delor the lieut. gov'r granting it, who is the same granting the commons, says: "The surveyor of this jurisdiction shall put Mr. Delor de Treget in possession of the land he asks, in the place and in the shape designated, provided it belongs to the king's domain, and is not prejudical to any other concession heretofore granted. But were the *the* grant not thus guarded, it being the day before, is the same as if it was the year before.

7th. Jean B. Martigny. The concession in favor of Martigny was made on 25th April, 1783; the date is antecedent to the grant of commons, and so falls within the remarks made on the other claims similarly situated.

In conclusion, we would refer to the several affidavits submitted, which will show the following facts as extracted from each of them:

1. Marie Philip Leduc: That in 1799 the people of Carondelet claimed and used as commons lands north and south of the river des Peres, and have ever since claimed and used the same as such, and as property in them belonging, and that such right was always recognised under the Spanish government up to the change of the sovereignty of the country.

2. Joseph Charleville: That for the space of 40 years and more, the claims to commons north and south of the river des Peres has been made, and land north and south of the river *have* during all that time been used by the people of Carondelet on their commons; that said commons was granted by the Spanish gov't, and that previous to the change of gov't a blazed line existed north and south of the river des Peres, and for about 2 miles south of Jefferson Barracks, showing the extent of the commons.

3d. Hyacinth Pigeon: That in 1806, commons was claimed north and south of the river de Peres; that at that time the line south of the river was blazed; that it was then understood and said, that the line of the survey was stopped at the river des Peres on account of high waters; that the blazed line to the whole extent of the commons was then visible, and was followed round by the affiant; that the inhabitants exercised the same right south of the river des Peres, which they did north; that in 1821, when the survey of the commons was made by Mr. Brown, affiant carried the chain and followed exactly the same blazed line shown to affiant in 1806, as far as the S. W. corner of the commons, where they found a corner stone; thence they continued an east line to the river, where they again found another corner stone.

4. George Shoultz: That for about 45 years the claim of commons has existed north and south of the river des Peres, and the north and south line given by Mr. Trudeau extended on south side of the river des Peres about 127 arpens, and during same period has been exercised in their extent; that it was always considered to extend N. and S. of the river under the grant of Trudeau (lieut. gov'r;) that a survey of the commons was commenced by Antoine Soulard, under the Spanish gov't, but not finished on account of high water; that several years after the survey thus begun by Soulard, he sent B. Cousin to complete same; that affiant, with others, was employed to assist Mr. Cousin in blazing, carrying chains, &c., and upon fixing compass to make start, the same was found out of order, and survey was therefore not completed.

5. Peter Delor, sen'r: That the claim to commons has existed for about 45 years, and has been used during that period, and that the claim and right extended one hundred and fifty arpens south of the lands of the inhabitants of Carondelet—that is, from the S. W. corner of their common-fields, running south and parallel to the Mississippi river 150 arpens, and this under grant from Trudeau.

That a survey of the commons was begun by Mr. Soulard about 43 years ago; affiant was present, and others, (names given).

They all went to the S. W. corner of the common-fields of Carondelet, in order to run the line of the land, or the 150 arpens below, granted by Trudeau, and surveyed the line as far as river des Peres; having arrived at the river, they were compelled to stop on account of high water, there being no bridge or other way to cross the same, and returned home.

Several years after this Soulard sent one Cousin to continue the survey, but for reason of compass being out of order, survey was not continued.

6. Louis Courtis: That the claim to commons has existed for about 45 years, and extended N. and S. of river des Peres, and to this extent the right of commons has been exercised during same

period; that the extent of commons was bounded by a line of 150 arpens, granted by Mr. Trudeau, to begin at S. W. corner of common-fields of Carondelet, and run parallel to the Mississippi; and that this line would extend about 127 arpens south of the river des Peres; that a survey of the line so granted by Trudeau was begun under the Spanish government, but was not proceeded on further than the river des Peres, on account of high water; that several years after, one Mr. Cousins was sent to continue the line, but after hands were obtained to assist in the survey the compass was found to be out of order, and so the same was not finished; that when the survey of Soulard was left unfinished as aforesaid, the inhabitants of Carondelet, by order of lieut. gov'r, *of* Soulard, continued the line south of the river des Peres, and blazed same to the extent claimed.

7. Jonah Parke: That in 1808 there was a blazed line, then understood to be the line of the commons of Carondelet, which line extended south of the river des Peres, and from appearance of blazes must have been made many years before, and during time of the Spanish gov't; that in year 1821 a surveyor named Rector run the line of the commons; affiant followed him some distance, as far as S. W. corner of commons, and while together the surveyor followed the old blazed line, and blazed many of the same trees before blazed; that this line runs between 4 and 5 miles south of river des Peres, and thence to Mississippi river.

We conclude with the observation, that this testimony supports the view taken by us of the documentary evidence.

Very respectfully, &c.,
The B'd of Trustees of town of Carondelet,
By BEVERLY ALLEN.

St. Louis, 12th February, 1840.

M. P. Leduc's Certificate.

No. 1, (referred to in Doc. Y.)
M. P. Leduc.

STATE OF MISSOURI,
County of St. Louis, ss.

I, the undersigned, Mary Philip Leduc, resident in the city of St. Louis, in the county of St. Louis, in the State of Missouri, do hereby certify that I am about 68 years of age; that I came in the then Upper Louisiana, now State of Missouri, in the month of Feb'y, 1793, where I resided, except on occasional absence, until this day; that I came to St. Louis in Nov., 1799, where I resided till the day of the date hereof; that the town of Carondelet, in the county aforesaid, was then settled, and that the inhabitants of said town, then the village of Carondelet, lived on town lots, cultivated their common-fields, and used what is now called their commons, north and south of river des Peres, for the supply of timber for their

fields and village, the mowing of hay and pasture for their cattle; that the said inhabitants have constantly used and claimed the commons aforesaid as their property; that from the month of Nov., 1789, until the cession of this country to the U. States, to wit, until the 9th day of March, 1804, I have acted as private secretary of the Spanish Lieut. Gov'r Don Carlos Dehault Delassus, in St. Louis, during which period the subject of the Carondelet commons was several times mentioned. The said lieut. gov'r never objected to the right of the inhabitants of Carondelet to said commons, but, on the contrary, recognised their right to the same; that at the time when Gen'l Atkinson went down with the troops to the now Jefferson Barracks, south of river des Peres, I was requested by an officer of the army to go down to Carondelet to draw an article of agreement between the U. States and the said inhabitants of Carondelet, a deed of release of a portion of their commons south of river des Peres, with the understanding that so soon as the troops would abandon that ground so released, that the same would revert to said inhabitants, with all the improvements thereon, without paying anything therefor; which said proposition being assented to by said inhabitants, the contract was drawn duplicate, one by an officer of the army, probably Mr. McRee, and the other by me, and executed.

The reason of my being called upon for such purposes was, as I have *been* insinuated at the time, that my standing with the inhabitants would bring the contract to a sooner determination.

M. P. LEDUC.

Dated St. Louis, Jan'y 27th, 1840.

Testimony of Witnesses.

No. 2.

Joseph Charleville.

Interrogatories propounded to Joseph Charleville, on subject of commons of the inhabitants of Carondl't:

1 ques. How old are you?

Ans. I am seventy years old.

2 ques. How long have you lived in what is now called the State of Missouri, at what time was it you lived in same, and whereabouts?

Ans. I have lived in the State now called Missouri forty-nine years, all of which I have lived in the vicinity of what is now called Carondelet township; my farm, on which I have resided the last twenty-two years, is about 10 miles from the town of Carondelet.

3d ques. Were you acquainted with the village of Carondelet, and for how long?

Ans. I have been acquainted with the village 49 years.

4 ques. Do you know anything of commons claimed by the inhabitants of that village?

Ans. Yes, I do.

5 ques. How long have you known of *shuch* claim being made by them?

Ans. Forty-odd years.

6 ques. For what purpose was their common used?

Ans. For to mow, firewood, house building, rails, and whatever purpose the inhabitants wished.

7 ques. What was the extent of the commons as claimed and used by them?

Ans. I have always known their line to commence at the Sugar Loaf; there a continuation of said commons extending south of the river des Peres a southerly course four and a half or five miles; thence to the Mississippi, being about 2 miles below what is now called the Jefferson Barracks.

8 quest. Do you know that their claim of commons extended south of the river des Peres?

Ans. Yes, I do, as I have expressed before in my 7th answer.

9 ques. Do you know of their exercising right of commons south of the river des Peres, and what mode did they exercise said right?

Ans. They have exercised their right as before stated in my 6th answer.

10 ques. Do you know their claim of common extended north of the river des Peres?

Ans. Yes, I do; as before stated, the Sugar Loaf is on the north side of the river des Peres.

11 ques. Do you know of their exercising right of commons north of the river des Peres, and in what mode did they exercise such right?

Ans. I know of their exercising the same right on the north as they have on the south side.

12 ques. Do you know of any recognition of such claim north and south of the river des Peres by the Spanish authorities while this country was under the government of Spain?

Ans. Yes, I do know that said commons was given under the Spanish gov't, and many years before this part of the country was ceded to the U. States, for I well remember that there was a blazed line beginning at the Sugar Loaf, and extending, as before expressed, about 2 miles below what is now called the Jefferson Barracks.

13 ques. Do you know of any survey of their claim of commons made or begun under the Spanish gov't, when and by whom; and if the same was finished, what has become of plat of same, and what lands did it include; and if not finished, why, and all particulars concerning same?

Ans. Not being interested in said commons, I never was present

or made any inquiries of said survey or plat; but as for the line and extent of said commons, it was known during the Spanish gover't by a line blazed on the trees, extending as I expressed before in my 12th answer.

14 ques. Do you know anything more rel. to the claim of commons by the inhabitants of Carondelet? if so, state all you know.

Ans. I have stated all I know.

JOS. CHARLEVILLE.

St. Louis County, Jan'y 18th, 1840.

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that on the eighteenth day of Jan'y, in the year of our Lord one thousand eight hundred and forty, before me, the subscriber, one of the justices of the peace for the central township, county aforesaid, Joseph Charleville is personally known to me to be the persons whose name is subscribed to the foregoing instrument of writing, and acknowledged it to be his act and deed, for purposes therein mentioned.

Taken and certified this day and year aforesaid.

LOUIS BOMPART,
Justice of the Peace.

No. 3, (referred to in Doc. Y.)

Hyacinth Pegeon.

Interrogatories propounded to Hyacinth Pegeon by the inhabitants of Carondelet, concerning their commons, on this 11th day of Jan'y, A. D. 1840:

Ques. 1. Mr. Pegeon, how old are you?

Ans. I will be 61 years old on the 3d day of October next.

2. How long have you lived in what is now called the State of Missouri; at what time was it you lived in same, and whereabouts?

Ans. I arrived at what is now called the city of St. Louis, State of Missouri, in the year 1804, and in 1805 I first went to what is now called the town of Carondelet, and in 1806 I became a citizen of the said town of Carondelet, and never left the same town ever since.

3. Do you know anything of commons by the inhabitants of that village?

Ans. Yes, I do.

4. How long have you known of such claim being made by them?

Ans. Ever since I have been here, for I was shown by them the corner-stone of their division between them and the inhabitants of St. Louis, which corner-stone was placed about two miles north of said town, at the place called Sugar Loaf, and in 1832 I saw the same corner-stone there yet.

5. For what purpose was the common used?

Ans. The inhabitants of Carondelet used it, as they needed it, for logs, rails, fire-wood, hay, &c., as their own property.

6. What was the extent of the commons claimed by them and used by them?

Ans. As to the north part of said commons—that is, north of the said town—is extended about 2 miles, as far as Sugar Loaf, where, as I before stated, the corner stone was placed.

7. Do you know that this claim of commons extended south of the river des Peres?

Ans. Yes, I do; when I first came here, in 1806, I was shown, by the inhabitants of Carondelet, a survey of their common south of said town, began by Antonia Soulard, and made as far as river des Peres, where said survey had been stopped, on account of high waters; the said inhabitants also made me then acquainted with the line of their commons south of river des Peres, which line was then well blazed, and extended parallel with the river Mississippi about 127 arpens, and which line I myself followed round.

8. Do you know that they exercised right of commons south of river des Peres, and in what mode did they exercise such right?

Ans. Yes, I do. They used it with the same privilege and use as they did the north part, as their own property, expelling all intruders thereon, in order to avoid all trespass which might have been permitted thereon.

9. Do you know that their claim of commons extended north of the river des Peres?

Ans. Yes, I do, as before stated, as far as *Loaf Sugar*, where there existed a dividing line between the commons of St. Louis and the commons of Carondelet.

10. Do you know of their exercising right of commons north of the river des Peres, and in what mode did they exercise such right?

Ans. With the same power and rights as they did the south of river des Peres, prohibiting the inhabitants of St. Louis, or any other person, to cross the line, which, as said, was at *Loaf Sugar*.

11. Do you know anything more relative to the claim of commons claimed by the inhabitants of Carondelet? If so, state all you know.

Ans. Some time in 1821, a survey of said commons was made south of river des Peres, by Mr. Brown, when myself I carried the chain, and we followed exactly the same blazed line shown me in 1806, as far as the S. W. corner of said commons, where we found a corner stone; from thence we continued an east line to the river, where we again found another corner stone.

Said survey was made, as I believe, by Mr. Jos. C. Brown, deputy under one Mr. Rector.

Given under my hand, at Carondelet, this 11th day of Jan'y, A. D. 1840.

his
HYACINTH ⋈ PEGEON.
mark.

Test: L. FASSEN.

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that on this 11th day of Jan'y, in the year of our Lord 1840, before me, the undersiged, one of the justices of the peace within and for the county aforesaid, came Hyacinth Pegeon, who, being by me duly sworn according to law, deposeth and saith that all the foregoing answers, by me made and answered, are all just and true.

Sworn and subscribed to, the day and year before mentioned, before me.

JOSEPH LE BLOND, *J. P.*

No. 4, (referred to Doc. Y.)

G. Shoultz.

Interrogatories propounded to George Shoultz, senr., by request of the inhabitants of Carondelet, relative to their commons, on this 4th day of Jan'y, A. D. 1840:

Quest. 1. Mr. Shoultz, how old are you?

Ans. I think I am 69 years old.

2. How long have you lived in what is now called the State of Mo.; at what time was it you lived in same, and whereabouts?

Ans. I have lived in the State of Missouri, now called, fifty-four years, of which I have lived 49 years in the township now called Carondelet township.

3. Were you acquainted with the village of Carondelet, and for how long?

Ans. For 52 years *ago*.

4. Do you know anything of commons claimed by the inhabitants of that village?

Ans. Yes, I do.

5. How long have you known of such claims being made by them?

Ans. About forty-five years ago.

Q. 6. For what purpose was their commons used?

Ans. For to mow, to cut wood for houses, rails, and many other farming necessaries, whatever the said inhabitants wished to disposed of as their own.

Q. 7. What was the extent of the commons, as claimed and used by them?

Ans. As to the north part of the commons, north of said village, I have not an exact knowledge of its extent.

8. Do you know that their claim of commons extended south of river des Peres?

Ans. Yes; I know that the continuation of 150 arpens, granted by Mr. Trudeau, beginning at the S. W. corner of the common-fields of said Carondelet, extended about 127 arpens south of river des Peres; thence parallel to the Mississippi.

9. Do you know of their exercising rights of commons south of river des Peres, and in what mode did they exercise such right?

Ans. I do; as I have before stated, to any use they thought proper.

10. Do you know that their claims of commons extended north of river des Peres?

Ans. Yes, I do.

11. Do you know of their exercising rights of commons north of river des Peres, and, in what mode did they exercise such right?

Ans. I do know of their exercising right of common, north of river des Peres, and, as I before mentioned, in the same mode as they did south of river des Peres.

12. Do you know of any recognition of such claim north and south of river des Peres by the Spanish authorities, while this country was under the gover't of Spain?

Ans. Yes, I do know that said commons was given by Zenon Trudeau, by the Spanish authorities, under the Spanish government.

13. Do you know of any survey of their claim of common made or begun under the Spanish government; when and by whom, and if the same was finished; what has become of the plat of same and what did it include; and if not finished, why? and all particulars concerning same.

Ans. I have knowledge of a survey commenced of said commons by Antoine Soulard, under the Spanish gover't, but said survey was not finished, on account of the high stage of the waters of river des Peres, which prevented the surveyor from going any further, and for which reason, I suppose, a plat was not made.

14. Do you know anything more relative to the claim of commons by the inhabitants of Carondelet? If so, state all you know.

Ans. I know that several years after the first beginning of said survey, Mr. Soulard sent one Bartholomew Cozens to come and continue the same survey, and when all ready, myself and others to help in carrying the chain, blazing. On placing the compass to make a start, said compass was found deranged, and therefore we were not able again to continue.

his
GEORGE ⋈ SHOULTZ, SEN'R.
mark.

Teste: L. FASSEN,
DELPHY CARLIN.

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that on the 4th day of Jan'y, in the year of our Lord 1840, personally came before me, one of the justices of the peace for the aforesaid county, George Shoultz, sen'r, who being by me duly sworn according to law, deposeth and saith that all the foregoing answers by him made and subscribed to are just and true.

Sworn and subscribed to before me, the day and year before mentioned.

JOSEPH LE BLOND, *J. P.*

No. 5, (referred to in Document Y.)

Peter Delor.

Interrogatories propounded to Peter Delor, sen'r, by the inhabitants of Carondelet, on this 9th day of January, 4840, concerning their commons:

Quest. 1. How old are you?

Ans. I will be seventy-two years old on the first day of next February.

2. How long have you lived in what is called at present the State of Missouri; at what time was it you lived in same, and whereabouts?

Ans. I was born in the town of Carondelet, in the State of Missouri, and always lived in the township now called Carondelet township.

3. Were you acquainted with the village of Carondelet, and for how long?

Ans. Ever since I was born, for I never left the place.

4. Do you know anything of commons claimed by the inhabitants of that village?

Ans. Yes, I do.

5. How long do you know of such claim being made by them?

Ans. About forty-four or forty-five years ago.

6. For what purpose was the commons used?

Ans. For whatever use the inhabitants thought proper, for to get log houses, rails, hay, and wood for fuel, &c.

7. What was the extent of the commons claimed and used by them?

Ans. They claimed north of the river des Peres, and used as their commons as far as what is called Sugar Loaf, about 2 miles north of the town of Carondelet.

8. Do you know the claim of common extended south of the river des Peres?

Ans. Yes, I remember that, in the year about 1796, a petition was presented to Mr. Zenon Trudeau by Mr. John B. Gamache

and by myself, in behalf of the inhabitants of Carondelet, for a continuation of their land; to which petition Mr. Trudeau made the following reply: that is, that he could not give us the continuation of our land, but seeing the industry of the people of Carondelet, in fencing their field, &c. &c., he would grant them one hundred and fifty arpens further down, beginning at the S. W. line of their common-field, and running a direct south course parallel with the river, one hundred and fifty arpens, which was granted as aforesaid by said Zenon Trudeau, under his hand, the same year.

9. Do you know of their exercising right of commons south of the river des Peres, and in what mode did they exercise such right?

Ans. I do know that they used it as their own, and for whatever use they wished and thought proper.

10. Do you know that their claim extended north of the river des Peres?

Ans. Yes, I do know that the claim extended north of the river des Peres, as far as Sugar Loaf, about two miles north of said town of Carondelet, where there was an east and west line surveyed by Pierre Chouteau, in order to have a division of commons between the inhabitants of St. Louis and Carondelet; which line ran from said Sugar Loaf a west direction, to the N. E. corner of the common-field of said Carondelet.

11. Do you know of their exercising right of common north of the river des Peres, and in what mode did they exercise such right?

Ans. With the same privilege and right as they did the south part of river des Peres, at their own discretion.

12. Do you know of any requisition of said such claim north and south of the river des Peres by the Spanish authorities, while this country was under the government of Spain?

Ans. Yes, I know that said commons was given unto the inhabitants of Carondelet by the Spanish authorities, and under the Spanish government.

13. Do you know of any survey of this claim of common made or begun under the Spanish government; when and by whom; and if the same is finished, what has become of the plat of same, and what land did it include round; if not finished, why? and all particulars concerning same.

Ans. I know of a survey commenced by Antoine Soulard about forty-three years ago, under the Spanish government, where myself I was present, as well as Julien Chouquette, Louis Menard, George Shoultz, sen'r, and Louis Courtois, sen'r, and many others. We all together went to the S. W. corner of the common-field of Carondelet with Mr. Soulard, in order to run the line of the land (or the one hundred and fifty arpens below) granted by Zenon Trudeau, and accordingly surveyed said line a south course, as far as river des Peres; having arrived at said river des Peres, we were

compelled to stop said survey on account of the high waters of the said river des Peres, there being no bridge, nor no other way to cross the same, and therefore returned home, and suppose no plat thereof was made.

14. Do you know any more relative to the claim of common by the inhabitants of Carondelet? If so, state all you know.

Ans. I know that several years after the commencement of the survey made by Antoine Soulard, that said Soulard sent one Bartholomew Cousin, in order to continue the said survey, and by reason of said Cozen's compass being out of repairs, the said survey could not be continued. As to the line surveyed by Mr. Pierre Chouteau north of the village of Carondelet, from Sugar Loaf to the N. E. corner of the common-field of Carondelet, I was present and saw said survey made, and same was made under the Spanish government.

Given under my hand at Carondelet, this 9th day of January, A. D. 1840.

his
PETER ⋈ DELOR, SEN'R.
mark.

Test: L. FASSEN.

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that on this ninth day of January, in the year of our Lord eighteen hundred and forty, personally came before me, the undersigned, one of the justices of the peace for the aforesaid county, Peter Delor, sen'r, who being by me duly sworn according to law, deposeth and saith that all the foregoing answer by him made and subscribed to are just and true.

Sworn and subscribed to before me, the day and year before mentioned.

JOS. LEBLOND, *J. P.*

No. 6, (referred to in Document Y.)

Louis Courtois, sen'r.

Interrogatories propounded to Louis Courtois, sen'r, by the inhabitants of Carondelet, on this ninth day of January, A. D. 1840, concerning their commons:

Question 1. How old are you?

Ans. I am sixty-six years of age.

2. How long have you lived in what is now called the State of Missouri; at what time was it you lived in same, and whereabouts?

Ans. I was born in that State now called the State of Missouri, and always lived in it; I have lived fifty-five years in the township now called Carondelet township.

3. Were you acquainted with the village of Carondelet, and for how long?

Ans. I was, and for fifty-five years ago.

4. Do you know anything of commons claimed by the inhabitants of that village?

Ans. Yes, I do.

5. How long do you know of such claim being made by them?

Ans. About forty-five years ago.

6. For what purpose was this commons used?

Ans. For to mow, to cut wood for houses, rails, and many other farming necessaries, whatever the said inhabitants wished to dispose of as their own.

7. What were the extent of the commons claimed and used by them?

Ans. They claimed and used as their commons from what is called *Loaf Sugar*, about two miles north of the village of Carondelet, to said village, and to their common-field.

8. Do you know that this claim of commons extended south of the river des Peres?

Ans. Yes, I know that a continuation of one hundred and fifty arpens was granted by one Mr. Zenon Trudeau, beginning at the S. W. corner of the common-field of said Carondelet, which extended about one hundred and twenty-seven arpens south of the river des Peres, thence parallel to the Mississippi.

9. Do you know of their exercising right of commons south of the river des Peres, and in what mode did they exercise such right?

Ans. I do, and they used it for hay, wood, &c., as I have stated, for whatever they needed or thought proper.

10. Do you know that their claim of commons extended north of the river des Peres?

Ans. Yes, I do; as before by me stated, their claim extended as far as what is called *Loaf Sugar*.

11. Do you know of their exercising right of commons north of the river des Peres, and in what mode did they exercise such right?

Ans. I do; with the same privilege, and for the same use, as they did south of the river des Peres.

12. Do you know of any recognition of such claim of common made north and south of the river des Peres by the Spanish authorities, while this country was under the gov't of Spain?

Ans. Yes, I know that said commons were given them under the Spanish authorities, while the country was yet under the government of Spain, by one Mr. Zenon Trudeau.

13th. Do you know of any survey of the claim of common made or begun under the Spanish government; when and by whom; and if the same was finished, what has become of the plat of same, and what land did it include round; if not finished, why? and all particulars concerning the same.

Ans. I have knowledge of a survey commenced of their commons, under the Spanish authorities, about forty-three years ago, by one Antonio Soulard, accompanied by Julien Chouquette, Louis Menard, senr., George Shoultz, senr., Peter Delor, senr., and my father, Louis Courtois, all whom left together my father's house to make a survey of said commons to the river des Peres, and south thereof. But when arrived at the said river des Peres, they were compelled to stop said survey on account of the high waters of said river, there being no bridge over said river, or no other means to cross the same; and in default of said continuance, then, it is supposed no plat was made.

14 ques. Do you know anything more relative to the claim of commons by the inhabitants of Carondelet? If so, state all you know.

Ans. I know that several years after the beginning of the forementioned survey by said Antoine Soulard, that one Bartholomew Cousin came by order of said Antoine Soulard to continue the said survey, and when himself and Cousin, and several other persons, who went to assist said survey, got to the river des Peres, in order to continue the survey begun by said Soulard, then and there being ready to go on and cross said river des Peres, again said survey was stopped on account of the surveyor's compass being out of order; further, I do not know.

15 ques. Do you know anything of a line of said commons ran and blazed south of river des Peres until the Spanish government?

Ans. I know that after the survey of Mr. Soulard—that is, by him begun, and not finished—that the inhabitants of Carondelet, themselves, either by order of Mr. Zenon Trudeau, or Antoine Soulard, went and continued running a line south of river des Peres, and blazed the same to the extent by them claimed.

Given at my hand at Carondelet, this ninth day of Jan'y, A. D. 1840.

his
LOUIS ⋈ COURTOIS.
mark.

Test: L. FASSEN.

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that on this ninth day of January, in the year of our Lord eighteen hundred and forty, personally came before me, the undersigned, one of the justices of the peace for the county aforesaid, Louis Courtois, sen'r, who being by me duly sworn according to law, deposeth and saith, that all the foregoing answers by him made and subscribed to are just and true.

Sworn and subscribed to before me the day and year before mentioned.

JOS. LEBOND, *J. P.*

No. 7, (referred to in Document Y.)

Jonah Parke.

Interrogatories propounded to Mr. Jonah Park, concerning the commons of the inhabitants of Carondelet:

First. How old are you?

Ans. I am in my fifty-ninth year.

2 ques. How long have you lived in what is now called the State of Missouri, and at what time was it you have lived in the same, and whereabout?

Ans. I have lived thirty-six years, and of which I have lived thirty-two in the township now called Carondelet township.

3. Were you acquainted with the village of Carondelet, and for how long?

Ans. For thirty years.

4. Do you know of anything of the commons claimed by the inhabitants of that village?

Ans. Yes, I do.

5. How long have you known such claim being made by them?

Ans. For thirty-two years, and the line must have been run many years before I came to Missouri; because, when I came, there was then a blazed line called the Carondelet common line, which, from the oldness appearance of the blazes, must have been run many years.

6. For what purposes were the commons used?

Ans. For to mow, to cut wood for rails, house logs, and any other purpose for common use, and all farming purposes whatever the said inhabitants wished.

7. What was the extent of the commons as claimed and used by them?

Ans. I have never seen a plat of said commons; but, *on* the year one thousand eight hundred and twenty-one, one of the Messrs. Rector ran the line of said commons. I followed the surveyors some distance; and when I was along, they run the old blazed line I refer to in my fifth answer; for the surveyors blazed many of the same trees that had been before blazed. From information, *any* my own knowledge, I think the said line runs a south course between four and five miles south of the river des Peres; thence three miles to the Mississippi.

8. Do you know that their claims of the commons extended south of the river des Peres?

Ans. Yes, as before expressed.

9. Do you know of their exercising rights of commons south

of the river des Peres, and on what mode did they exercise such rights?

Ans. As before expressed.

10. Do you know that their claim of the commons extended north of the river des Peres?

Ans. I know they have.

11. Do you know of their exercising rights of commons north of the river des Peres, and in what mode did they exercise such right?

Ans. Yes, as before expressed in my sixth answer.

12. Do you know of any recognition of such claim north and south of the river des Peres by the Spanish authorities while the country was under the government of Spain?

Ans. I came to live where I now reside in the year one thousand eight hundred and eight; and when I came, the lines of the commons before expressed was run and blazed, and from the appearance of the blazes on the trees, it must have been done during the Spanish gov't.

13. Do you know of any survey of the claims of the commons made or begun under the Spanish government, when and by whom; and if the same was finished, what has become of the plat of same, and what lands did it include; and if not finished, why? and all particulars concerning same.

Ans. As before expressed, I came to this State in the year one thousand eight hundred and four, one year after the Spanish government, and, as before stated, the line of the commons must have been run under the Spanish government; that, as before mentioned, when Rector ran the line I went with him as far as the south line ran; that he ran as far as the old blazes, and I can now show where the S. W. corner of said line is or was then established.

14. Do you know anything more relative to the claim of the commons by the nhabitants of Carondelet? If so, state all you know.

Ans. I have stated all I know.

In testimony whereof, I have hereunto set my hand and seal this eighth day of January, 1840.

JONAH PARKE.

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that on this eight day of January, eighteen hundred and forty, before me, Zeno Mackay, a justice of the peace in and for the township of Carondelet, county of St. Louis, personally came Jonah Parke, who, upon his oath, acknowledges the foregoing to be his act, and answer to the interrogatories therein mentioned, to the best of his knowledge.

Sworn to and subscribed the day and year aforesaid.

ZENO MACKAY,
Justice of the Peace.

Instr's of Com'r Whitcomb to Sur. Gen'l Milburn.

"A, No. 19." GENERAL LAND OFFICE,
Jan'y 20th, 1841.

SIR: In relation to the claim of the village of Carondelet, in Missouri, to a tract of land called the common of that village, within which the military post of Jefferson Barracks is situated, I herewith enclose for your information a copy of report No. 300 of Solicitor McRoberts, and a copy of a communication of the 18th Nov. last from the Secretary of War, with a copy of his letter of the 16th of the same month, to Brigadier Gen'l Atkinson, at Jefferson Barracks.

You will perceive that the Solicitor advises, "that the tract of land beginning on the Mississippi river at the figure laid down upon plat X, (which plat accompanied your report of the 15th April last,) and near the northeast corner of Martigny's survey; thence with the black dotted line to d; thence with said line to the river des Peres, and up the river to the line of Alvarez's survey, and across the river to letter e, and from said letter e to c, and on to the river with the present survey, be reserved for the future action of Congress;" and remarks, that by making this reserve, Congress can grant the 6,000 arpens, (all the inhabitants claimed, which $5{,}104\frac{20}{100}$ acres, excluding all private claims,) to the village of Carondelet for a common, or in such manner as may be deemed proper, and can retain of the public land 1,702 acres as a site for Jefferson Barracks, or for any disposition that may be judged expedient. He further advises, "that the balance of the unappropriated land without those limits, and included in Rector's and Brown's surveys, and which amounts to several thousand acres, be reserved and sold as public land."

Concurring in this report, I have addressed a communication to the Hon. Secretary of the Treasury, with a view of having the matter brought to the attention of Congress, for such action as may be deemed proper in the way of making a grant to the village of Carondelet, &c.

In the mean time, you are requested to represent on your records the tract within the limits suggested by the Solicitor, and referred to in the foregoing as lands reserved for the purpose alluded to, and "the balance of the unappropriated land without those limits, and included in Rector's and Brown's surveys," you are instructed to have surveyed as public lands, to the end that the same may be duly brought into market as such.

Very respectfully, your obedient servant,
JAS. WHITCOMB,
Commissioner.

WILLIAM MILBURN, Esq.,
Surveyor Gen'l St. Louis, Mo.

Rep't of Solicitor McRoberts.

"A, No. 20."

No. 300. GENERAL LAND OFFICE,
Solicitor's Bureau, October 22d, 1840.

SIR: The surveyor general of Missouri and Illinois has, in pursuance of the directions contained in your letter of the 24th of Sept., 1839, submitted a report, with various accompanying documents, upon the claim of the inhabitants of the village of Carondelet, in the State of Missouri, to a tract of land lying south of the river des Peres, as a common.

I have examined this report, and the accompanying evidence and exhibits, and submit the following as the result of this examination.

On the 22d of June, 1839, the Secretary of War addressed a letter to the Com'r of the General Land Office, enclosing a letter from the sur. general of Missouri, and plat of survey, and requested that measures be taken to sell the land lying south of the river des Peres, as designated on the plat, and which was claimed as common by the village of Carondelet, but which he believed belonged to the U. States.

The subject was referred to Judge Burchard, the Solicitor, who reported the several thousand acres of the land included in Brown's survey of the common was public property, to which the citizens of Carondelet had no legal or equitable claim, and that the same, with the exception of the part needed for military purposes, and the portions included in private claims, should be surveyed and sold as public land.

The district attorney of Missouri has also given an opinion against the validity of the claim to common of the tract of land lying south of the river.

The surveyor general entertains a different opinion, as appears from his report dated 15th of April, 1840.

The subject is one of great importance, looking at the amount of property, and still more so as it respects the principles involved in the decision. The claims to lands designated as commons, in favor of the inhabitants of Carondelet, be it little or much, depends upon the act of Congress approved 13th June, 1812, 1st vol. Laws and Instructions, chap. 140, the first section of which provides that "the rights, titles and claims to town or villages of Portage des Sioux, St. Charles, St. Louis, St. Ferdinand, Villa a Robert, Carondelet, St. Genevieve, New Madrid, New Bourbon, Little Prairie, and Arkansas, in the Territory of Missouri, which lots have been inhabited, cultivated or possessed prior to the 20th day of Dec'r, 1803, shall be and the same are hereby confirmed to the inhabitants of the respective towns or villages aforesaid, according to their several right or rights in common thereto."

To act, then, contains a proviso, excepting from its operation any claim or claims to the same lands, or any part thereof, confirmed by the board of commissioners.

The 2d section also gives the President power to reserve certain portions of such lands for military purposes.

On the 27th of January, 1831, Congress passed another act (same vol., ch. 406,) which declares that "the U. States do hereby relinquish to the several towns and villages of Portage des Sioux, St. Charles, St. Louis, St. Ferdinand, Villa a Robert, Carondelet, St. Genevieve, New Madrid, New Bourbon, and Little Prairie, in the State of Missouri, all the right, title and interest of the U. States in and to the town or village lots, out-lots, common-field lots and commons, in, adjoining and belonging to the said towns or villages confirmed to them respectively by the 1st section of the act of Congress passed the 13th June, 1812, to be held by the said inhabitants of said towns and villages in full property according to their several rights therein, to be regulated or disposed of for the use of the inhabitants, according to the laws of the State of Missouri."

This last act, which was approved the 27th of Jan'y, 1831, confers no new or additional rights. It is nothing but a bare relinquishment from the government of the land confirmed to several towns and villages by the act of June 13th, 1812.

Indeed it is difficult to perceive what object was contemplated by the act of 1831, unless it was to acknowledge a right in the State of Missouri to pass laws for the final disposition of the property, and especially the school lands referred to in the 2d section. The act of 1812 being the foundation of this claim by the inhabitants of Carondelet, we will proceed to examine its provisions, together with the evidences of right to this commons.

The act does not, as seems to have been supposed, confirm all claims to lots, or all claims to commons. On the contrary, it virtually negatives mere claims not founded in right; it confirms the title to the land, not according to the claim, but according to the "several right or rights," titles and claims to the parties. These are the words: that the rights, titles and claims to the town or village lots, out-lots, common-field lots and commons, &c., &c., "are hereby confirmed to the inhabitants of the respective towns or villages aforesaid, according to their several right or rights in common thereto."

Here we have rights, titles and claims confirmed, but not indiscriminately; they are confirmed only according to "their several rights," or according to their rights in common thereto.

The act does not say that these lands shall be confirmed according to the "claim" of the parties—not at all; but it expressly enacts that it confirms claims according to the "right or rights" of the claimant or claimants, and not otherwise.

Had the act of 1812 read thus: "that the rights, titles and claims to town or village lots, out-lots, common-field lots and commons," &c., "are hereby confirmed to the inhabitants of the respective towns and villages aforesaid," and no other words, the case would then have been clear. The mere naked claims would have been confirmed.

If Congress had intended to confirm such, would not the enactment have been expressed in the very words as stated?

But Congress intended no such thing, because in the enacting clause of the statute, and as a very material part of it, it added, "according to their several right or rights in common thereto."

By confirming the title to lands according to rights, it negatives all those not founded in right. The rule is well illustrated by the maxim "expressio unius, est exclusio alterius." But it may be asked why the terms, "rights," "titles," and "claims," inserted in the act, if Congress did not mean to confirm them all, and what was meant by "rights," "titles" and "claims?" This is the answer: Congress was legislating in regard to property that had belonged to two other governments, France and Spain. These governments had adopted rules for the disposition of the pub ic domain. In some instances, absolute grants had been made. The fee simple had passed, and Congress merely recognised and affirmed that which, by the treaty and the law of nations, was already absolute.

Other cases existed where the title had not been perfected, but where the claimants had complied with their agreements, and with the laws and usages of the government previous to the cession of Lou'a to the U. States, and where good faith and strict justice required that the titles and claims should be perfected. It was for the confirmation of such rights, titles and claims, that this act of Congress was passed; claims not founded in right, or stained with fraud, are not claims within the meaning of the law, and were never contemplated.

The construction that the lands were to be confirmed according to right, makes the case intelligible. It is rational—it opens the door to investigation, in order that the government and individuals may have a full and impartial hearing. But to contend that all claims, however vague or unfounded, are embraced by this act of Congress, makes the case irrational, because it precludes investigation. Nay, more, such a construction would subvert the obvious intent of its makers, and the principles of universal justice; I therefore conclude, that no claim was confirmed by the act of June 13, 1812, except those founded in right.

The next inquiry is, has the claim to common by the citizens of Carondelet to the land lying south of the river des Peres any foundation in right?

Before proceeding with the inquiry, it is proper to remark, that

there is no evidence of any grant of this land to the village of Carondelet for common, or any other purpose, by the Spanish authorities.

On the 6th of December, 1796, John Bte. Gamache presented a petition to the lieut. governor, Zenon Trudeau, in which he states, "that after the petition he handed to you on the 5th of October last, for the purpose of obtaining the continuation of their lands, (meaning the inhabitants of Carondelet,) you told him, that altho' you could not accede to his demand, you would, however, make your efforts to grant him 40 arpens above the Parc."

The petition then proceeds to inform the lt. governor that he has a mill, and prays for a grant of land to himself, to be bounded by the land of Mr. Constant, the Mississippi, and the river des Peres, and the village of Carondelet.

Upon this petition Mr. Trudeau made the following endorsement: "The land which is asked for is included in that which has been reserved to furnish the wood necessary to the village of Carondelet, and the demand made by Mr. Gamache, as well as all concessions granted in the direction of the line beginning at the end of the lands of said village, and running parallel to the Mississippi, one hundred and fifty arpens lower down, cannot be admitted.

St. Louis, the 7th Dec'r, 1796."

What became of the petition of the 5th of October, does not appear. Its object seems to have been a direct application for an extension of the village common, and was refused.

On the 25th of Dec'r, 1797, Antoine Soulard made this certificate: "We, the undersigned, a surveyor commissioned by the gov't, do certify to all to whom it shall appertain, that on this 21st of Dec'r, in virtue of the order transmitted by the lieut. gov'r to Mr. De Treget, captain commandant of the said village, enjoining upon the inhabitants to make known the line of a tract of land which was conceded to them on the 7th of Dec'r, 1796, which line must be parallel with those of Mr. Ant'e Reilhe and Alvarez, the said inhabitants, in presence of their commandant, have agreed upon causing their line to be drawn from the last bound placed at the extremity of the depth of their lands, which had been formerly surveyed by Mr. Pierre Chouteau, in virtue of an order from the lieut. gov. Having taken the bearing course of these same lands, I found that they ran S. 28° W. I followed this same course 23 arpens 3½ poles, at which distance I intersected the river des Peres; the end of the line on the bank of the same river has been bounded with a stone, having for witness two flint stones, and one flattened lead bullet. The land of Mr. Alvarez must be distant from the said stone bound 24 feet, in following the same

line parallel; and in order that the said inhabitants may prove the same, I have delivered these presents.

St. Louis of Illinois, 25th Dec'r, 1797.

ANTOINE SOULARD."

On the 18th of Feb'y, 1806, Mr. Soulard made out a certificate that the inhabitants of Carondelet had requested him to measure for them "a portion of land which was granted to them as a common by the lieut. gov. Don Zenon Trudeau;" that Mr. B. Cousin was to have made the survey, but when he went to the place his compass was out of order, and he failed to make the survey, and that his own engagements had prevented him from doing it.

This certificate was made several years after the change of government, was not under oath, was not authorized by any law, and gives no description to the land. It is therefore not such a paper as can be of any service in the examination of the case.

For the purpose of making out a claim to commons, sundry ex parte affidavits have been made by citizens of Carondelet, and which the sur. gen'l has included with his report. These affidavits state, that the inhabitants have been in the habit of procuring rails, wood, hay, &c., from the land claimed, or a part of it, for a considerable length of time—some of them say as much as forty or forty-five years. They all speak of the survey made by Mr. Soulard the 25th of Dec'r, 1797, and which terminated at the river des Peres. In these affidavits it is also stated that Mr. Soulard proceeded no further than the river before named, in consequence of high water.

Louis Courtois, senr., testifies: "They (the inhabitants of Carondelet) claimed and used as their commons, from is called *Loaf Sugar* (understood to be a mound) about 2 miles north of the village of Carondelet, to said village and to their common-field. He also certifies that the lieut. gov., Trudeau, granted them 150 arpens, extending south from the common-field, and running parallel with the Mississippi, and that the survey of Mr. Trudeau was not continued south of the river des Peres, because of high water."

The affidavit also contains this passage:

"I know, that after the survey of Mr. Soulard—that is, by him begun and not finished—that the inhabitants of Carondelet themselves, either by order of Zenon Trudeau or Antoine Soulard, went and continued running a line south of river des Peres, and blazed the same to the extent they claimed."

Other persons speak of a blazed line being found when Mr. Rector made the first survey in 1821, and they also speak of a grant made by Lieut. Gov. Trudeau of this common to the inhabitants of Carondelet.

They also say that this line, blazed by themselves, was made

during the time of the Spanish government, &c. I have copied the exhibits herein for the purpose of presenting a full view of this claim, as made by the claimants themselves. We will now proceed to examine the exhibits and papers.

The ex parte affidavits all speak of a grant by Lieut. Govr. Trudeau, and they also refer in the clearest manner to his order endorsed upon the petition of Gamache, and it is to that that they refer, when they speak of a grant. For example, the affidavit of Peter Delor, senr., contains the following passage:

"They (the inhabitants of Carondelet) claimed north of the river des Peres, and used as their commons as far as what is called Sugar Loaf, about two miles north of the town.

Ques. Do you know that the claim of commons extended south of the river des Peres?

Ans. Yes, I remember that in the year 1796, a petition was presented to Mr. Zenon Trudeau, by Mr. John B. Gamache and myself, in behalf of the inhabitants of Carondelet for a continuation of their land, to which petition Mr. Zenon Trudeau made the following reply: That he could not give us the continuation of our land, but seing the industry of the people of Carondelet, in fencing round their fields, he would grant them 150 arpens further down, beginning at the S. W. line of their common-fields, and running a direct south course parallel with the river, 150 arpens, which was granted as aforesaid by said Trudeau, under his hand, the same year."

I have copied this paper to show the impression of one of the inhabitants interested in sustaining the claim. He says that when the petition was presented to Lt. Govr. Trudeau for a continuation of the common, that he said he could not give them the continuation of the land, but would give them 150 arpens, running a direct south course, parallel with the river, and then that Mr. Trudeau made the grant under his hand the same year. The petition to Mr. Trudeau, and his answer, have been heretofore quoted.

In the petition of Mr. Gamache, of the 6th of October, 1796, he makes a reference to another petition, which had been presented on the 5th of October, and the prayer of which had been refused. It must be that to which Mr. Delor refers in his affidavit. Mr. Delor refers expressly to Gamache and himself, as having made application, and then adds, that the 150 arpens south were granted by Mr. Trudeau the same year. The witnesses appear to be illiterate, and which accounts for their statements that Lieut. Gov. Trudeau made a grant of the land.

There is no grant whatever to the inhabitants of Carondelet of the land now claimed for commons, or for any other purpose.

The endorsement of Trudeau upon Gamache's petition is not a grant. He refused to grant the land for a common, when the application was direct for that purpose, in October, 1796.

In Dec'r, 1796, when Gamache applied for a part of the same land, he endorsed upon his petition that the land applied for had been "reserved to furnish the wood necessary to the village of Carondelet."

This declaration manifests an intention on the part of Gov. Trudeau to withhold the land for that purpose, and not to make any grants to individuals within the same. He seems to have refused to make any grant of the premises, either to the inhabitants or to individuals. His refusal to make a grant, the 5th of October, of the land, and his not having executed any grant to the village, shows most conclusively that this tract of land was not severed from the public domain, and that it continued and was part of the domain of the king at the date of the cession.

The next piece of evidence which has been adduced in support of the right to this land as a common is the certificate of Antoine Soulard, the sur. genl., which has been copied in the preceding part of this report.

In this certificate Mr. Soulard states that, in pursuance of an order of Lt. Govr. Trudeau, of the 7th Decr., 1796, and which corresponds precisely with the date of the endorsement of Trudeau upon Gamache's petition, and in which the inhabitants are enjoined to make known their lines, &c., he made a survey as agreed upon, from the extremity of their land as surveyed by Mr. Chouteau; that the bearing was found to be S. 28° W.; that he run the line to the river des Peres, being 23 arps. 3½ poles; that the end of the line was noted by stones, and a leaden bullet, &c. Why Mr. Soulard did not proceed with the survey, if he was in fact to have proceeded further, does not appear from his certificate. The ex parte affidavits say it was on account of high water, but Mr. Soulard gives no intimation of any such obstruction; had that or any other cause prevented the completion of the survey, he could hardly have omitted to state it. His certificate, made in due form, proves a survey made by the consent of the inhabitants and their commandant to the river des Peres, with the course and distance. He speaks of an order from Mr. Trudeau for the survey, but does not state what extent the survey was to be. If we judge from his acts, he was certainly limited to the tract north of the river des Peres.

The order referred to is not produced, nor is there any record of it, and it is inadmissible to infer from the ex parte affidavits that this order directed the survey south of that river.

In the year 1808, this claim was presented to the board of com'rs at St. Louis for 6,000 arpens.

In the testimony then taken, nothing was said about this survey of Soulard extending south of the river, or that any order or grant authorized such extension.

The survey of this land was first made by Mr. Rector, in 1832, (1821;) the lines were retraced by Mr. Brown.

Upon what principles Mr. Rector made this survey, so as to comply with any claim which had ever been made to this common, is wholly inconceivable. His survey is a total departure, not only from the survey of Soulard, but also from the claim of the inhabitants and from the order of Trudeau, reserving the land.

Soulard certifies that he made his survey running S. 28° W. to the river des Peres. Rector has run S. 35° W., the whole length of Alverez's line, and the balance of the distance he has run S. 36° 20′ W., which is a variation of between 7 and 8 degrees for upwards of five miles.

The oral testimony of all the witnesses is, that Mr. Trudeau promised them, or granted them, 150 arpens, running south and parallel with the Mississippi.

In the order which Mr. Trudeau endorsed on Gamache's petition, he says: "All concessions in the direction of a line beginning at the end of the lands of said village, and running parallel to the Mississippi 150 arpens lower down, cannot be admitted," &c. Yet, in despite of all this data of claim, the survey is made, not to run parallel with the Mississippi nor due south, but to run 36° 20′ W. of south.

This is not all. The inhabitants never claimed but 6,000 arpens at any time, which is $5,104\frac{20}{100}$ acres; but the surveyor did not confine himself to that quantity. He has surveyed for them $9,905\frac{20}{100}$ acres, which is nearly double the quantity claimed.

The surveyor general in his report, dated the 15th of April, 1840, says: "You will see that my construction of the law is distinctly in favor of the village to the extent of 150 arpens from S. W. corner of the field lands; and were there no controlling circumstances, I would not hesitate to run the west boundary as represented by the black dotted line c. d. on the plat X, which is 150 arpens parallel to the general course of the Mississippi." He then proceeds to detail his reasons for not running the line as stated. These are founded, as he says, upon the operation of Soulard in running the line c. e. on the plat X, north of the river des Peres; and the Spanish calls for the limits and common of Carondelet in the claims of Alvarez and Valle, upon the supposed intention of the Spanish gov't, and upon the act of Congress of June 13th, 1812.

From all this I respectfully dissent. I can neither accord in the premises nor in the conclusions of the surveyor general.

1st. The survey of Soulard to the river, and his establishing his corner and executing a certificate of the fact, does not prove that he was to make any survey south of the river; and if it did, it could not establish the fact that he was to run S. 26 30 W. for upwards of five miles, in direct violation of Trudeau's order upon Gamache's petition.

2d. The calls for common in the claims of Alvarez and Valle

cannot change the explicit terms used by Trudeau, and which are these: "Beginning at the end of the lands of the village and running parallel to the Mississippi."

3d. The intention of the Spanish gov't to extend this line according to Rector's survey is negatived by Trudeau's order, and by the omission of the gov't to make any grant, or to cause any such survey to be made.

4th. The language of Soulard in making his survey north of the river des Peres—"that the line must be parallel with those of Mr. Antoine Reilhe and Alvarez," "and that the land of Mr. Alvarez must be distant from the said stone 24 feet," meaning thereby the corner he established on the north side of the river—surely does not prove that such course was to be followed south of the river, much less does it show that he was to make any survey whatever south of the same.

5th. The act of Congress never intended to confirm claims not founded in right; and no inference can be drawn from it in any degree favorable to the claim under consideration.

From a full examination of the subject, I have come to the conclusion that the lands included in the survey of the commons were not granted by the Spanish gov't to the inhabitants of Carondelet for the purpose contemplated, nor for any other purpose; and that the endorsement of Lieut. Governor Trudeau upon Gamache's petition was not a grant of the land, and can only be treated as an intention to reserve a part of the lands south of the river; in his own words, "to furnish wood necessary to the village of Carondelet;" and that the fee simple in the soil did not and was not intended to pass out of the Spanish crown, and that the title to the land was in the crown at the date of the cession, and as such passed to the U. States.

2d. That the act of Congress of June 13th, 1812, did not confirm the lands as surveyed by Mr. Rector to the village of Carondelet, nor was it affected by the act of January, 1831. I however believe that good faith to the citizens of Carondelet, and in fulfilment of what they were led to believe was the intention of Lt. Gov'r Trudeau to do in the premises, that Congress will make a grant of some portion of the lands for the purpose contemplated. I therefore advise that the tract of land beginning on the Mississippi river at the figure 6, laid down upon plat X, and near the N. E. corner of Martigny's survey; thence with the black dotted line to d; thence with said line to the river des Peres, and up the river to the line of Alvarez's survey, and across the river to letter e; and from said letter e to c, and on to the river with the present survey, be reserved for the future action of Congress. The quantity within these limits is about 7,700 acres, as estimated by the clerk of the surveys. Within this tract is also situated the Jefferson Barracks, in Missouri.

By making this reserve, Congress can grant the 6,000 arpens, which is all the inhabitants claimed, which is 5,104 $\frac{20}{100}$ acres, excluding all private claims, to the village of Carondelet for a common, or in such manner as may be deemed proper, and can retain of the public land 1,702 acres as a site for Jefferson Barracks, or for any disposition that may be judged expedient.

I further advise that the balance of the unappropriated land without those limits, and included in Rector's and Brown's surveys, and which amounts to several thousand acres, be surveyed and sold as public land.

I am, very respectfully, your ob'd't servant,

SAM'L McROBERTS, *Solicitor.*

NOTE.—The papers are all returned. Plat X, which is specially referred to, is made part of this report.

Letter from J. R. Poinsett to Gen'l H. Atkinson.

WAR DEPARTMENT,
November 16th, 1840.

SIR: I transmit herewith a copy of a letter from the acting Com'r of the Gen'l Land Office of the extract from the report of the Solicitor of that office, and of the plat X referred to by the acting Commissioner.

You will perceive that this office confirms the report of the Solicitor, and that the latter is of the opinion that the village of Carondelet has no legal claim to the land called the commons of that village, but that it has so strong an equitable claim to a part of it, Congress will probably sanction it; and he advises that a portion of it which he designates be reserved for the future action of Congress. The part thus recommended to be reserved would allow 5,104 $\frac{20}{100}$ acres for a common for the village of Carondelet, which is the extent of its claim, and 1,702 as a site for Jefferson Barracks, and for military purposes connected with it. You will please cause this latter quantity to be laid in such direction as would be most useful to that post, and as would best answer for the general military purposes connected with it; and you will cause a plat to be made of it, and forward it to this office as early as practicable.

Very respectfully, &c.,

J. R. POINSETT.

Brig'r Gen'l H. ATKINSON,
Jefferson Barracks, St. Louis, Mo.

Letter from J. R. Poinsett to Com'r Gen'l Whitcomb.

WAR DEPARTMENT, *Nov. 18th*, 1840.

SIR: I return you the plat of the commons of the village of Carondelet, which accompanied your letter of the 11th inst., and for

the information of your office I enclose you a copy of the instructions given to Gen'l Atkinson to lay off and transmit a plat of that part of the tract embracing 1,702 acres, which the Solicitor of your office is of the opinion may properly be retained for military purposes. As soon as the plat shall have been received from Gen'l Atkinson a copy of it will be furnished to you.

Very respectfully,

Your most ob't servant,

J. R. POINSETT.

JAMES WHITCOMB, Esq.,
Com'r Gen. Land Office.

Letter from Com'r Shields to F. R. Conway.

GENERAL LAND OFFICE,
Sept. 1st, 1845.

SIR: On the 11th July Alexander Kayser applied for instructions to be sent to you for the survey of a part of the Carondelet common, as directed in 1841, which was refused by letter of this date, a copy of which is herewith enclosed.

It may be important, however, to have a diagram showing the area of that part of the survey of the commons approved by Sur. Gen'l Milburn on the 15th April, 1840, lying north of the river des Peres, and also the area of the tract within the dotted red lines, and within the dotted black lines.

You will please, therefore, forward such a diagram, excluding of course the areas of the confirmed private claims.

Yours of the 20th ultimo has been received enclosing 24 plats of claims confmd. by the act of 4th July, 1836, and also yours of the 21st ultimo transmitting 24 plats of subdivisions asked for by the reg'r of Clinton, Mo.

Very respectfully, your obed't servant,

JAMES SHIELDS, *Comm'r.*

F. R. CONWAY, Esq.,
Sur. Gen'l, St. Louis, Mo.

Letter from Com'r Shields to Alex. Kayser.

(Copy.)

GENERAL LAND OFFICE,
Sept. 1st, 1845.

SIR: In reference to your communication of the 11th July, requesting that the sur. gen'l at St. Louis may be directed to carry out the instructions of 1841 relative to the survey into sections of part of the land claimed by the village of Carondelet as "the common," I have carefully examined that claim, and have come to the conclusion that it would be inexpedient at present to direct the

survey of those lands, nor until the further action by Congress on the subject.

Very respectfully, your obed't servant,
JAMES SHIELDS, *Comm'r.*

ALEXANDER KAYSER, Esq.,
St. Louis, Mo.

Letter from Com. Wilson to Sur. Gen., St. Louis.

(Page 66.)

"A, No. 21."

GENERAL LAND OFFICE,
February 5th, 1853.

SIR: With a letter of the 26th ult'o, I received the decision of the Secretary of the Interior in regard to the "Carondelet common case," and request that you will make known the purport of the same to all parties interested, and cause a survey of that claim to be executed in accordance with said decision.

On the 28th ult'o I addressed a letter to the Hon. Secretary of the Interior, stating that as a survey in accordance with this decision will detach a considerable body of land from the survey of Carondelet, as retraced by Brown in 1834, I requested that he would advise me whether, in ordering a survey in accordance with his decision, the lands which may be detached by the new survey from Brown's survey, and not included in any other claim, shall be laid open to sale, or whether the same shall be held in reservation, subject to the further action of Congress in regard to them.

When an answer shall have been received, you will be duly advised of the same, so that your action may be in accordance therewith, and that you may advise the land officers of the proper district accordingly.

Very respectfully, your obdt. servant,
JOHN WILSON, *Comm'r.*

SUR. GENERAL, *St. Louis, Mo.*

Decis'n of Sec'y of Interior, Stuart.

(Copy.)

A, No. 22.

The Carondelet Common Case.

After a careful consideration of this case, I am led to concur in the opinion expressed, and judgment pronounced, by the supreme court of the State of Missouri, at the July term, 1844, in the case of Dent vs. Bingham, which involved the same principles which are in issue in this case.

I am of the opinion that the refusal of the lieut. gov'r, Trudeau, on the 7th Dec'r, 1796, to make the grant asked for in the petition of Gamache, is not evidence of title. The answer of Lieut.

Gov'r Trudeau is, at the most, merely evidence of an intention or purpose to make a grant, but certainly does not of itself constitute a grant. A proprietor may very properly assign, as a reason for not making a particular concession, his purpose to dispose of the property in another way; but the expression of such a purpose vests no right or title, legal or equitable, in the party in whose favor this intention has been expressed. The only source from which the village of Carondelet can derive a title in this case, is the confirmatory action of Congress. That action was founded on and limited by the claim then set up by Carondelet.

The confirmation was not intended to extend, and did not extend beyond the claim asserted; and that claim was for 6,000 arpens, extending in a direction described in the claim as filed.

It was not a claim by metes and bounds for an estimated quantity of land; for (if) it had been, then the boundaries, and not the quantity, would have governed. But it was a claim for a specified quantity of 6,000 arpens, without regard to the boundaries, except on the side next the village, and extending from the boundary of the village as far as might be necessary to embrace the quantity of 6,000 arpens claimed.

This was the claim which was confirmed, and in my judgment the village can claim no more. If, therefore, that quantity can be had without interfering with the rights of others, which had vested prior to the act of confirmation, the village of Carondelet is entitled to have it laid off.

The Land Office will cause the necessary orders to be made to give effect to this decision.

A. H. H. STUART,
Secretary.

Department of the Interior,
Washington, Jan'y 25th, 1853.

Letter from Sur. Gen. Spaulding to Com'r of Gen. Land Office.

"A, No. 23." OFFICE OF THE SURVEYOR GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, 23d March, 1853.

SIR: I received in due time the Commissioner's communication of the 5th ulto., with which was enclosed the decision of the Hon. A. H. H. Stuart, Secretary of the Interior, dated the 25th of Jan'y last, on the "Carondelet common case."

In that decision there is stated in regard to the right of the inhabitants of Carondelet to their commons, that the "confirmation was not intended to extend, and did not extend beyond the claim asserted, and that claim was for 6,000 arpens, extending in a direction described in the claim as filed.

"It was not a claim by metes and bounds for an estimated quan-

tity of land; for had it been, then the boundaries, and not the quantity, would have governed.

"But it was a claim for a specified quantity of 6,000 arpens, without regard to boundaries, except on the side next to the village, and extending from the boundary of the village as far as might be necessary to embrace the quantity of 6,000 arpens claimed.

"This was the claim which was confirmed, and in my judgment the village can claim no more.

"If, therefore, that quantity can be had without interfering with the rights of others, which had vested prior to the act of confirmation, the village of Carondelet is entitled to have it laid off. The Land Office will cause the necessary orders to be made, to give effect to this decision."

In his letter of the 5th ulto., the Com'r instructed the sur. general to cause a survey of the common of Corondelet to be made in accordance with said decision.

I would at once have issued directions to execute the survey of the common of Carondelet, in accordance with the views of the Secretary of the Interior, had I fully understood some points in his decision, that appear to me to be rather obscure, and which it is the object of this letter to lay before you for your consideration and future instructions.

1st. The Secretary says it was a claim for a specified quantity "of 6,000 arpens, without regard to boundaries, except on the side next to the village, and extending from the boundary of the village as far as might be necessary to embrace the quantity of 6,000 arpens claimed."

The village of Carondelet was not laid out under the Spanish government, when it was only composed of some lots in its northern part; subsequently a certain number of lots were confirmed by the old board and by recorder Bates, under the acts of 1807 and 1812, and proven before recorder Hunt, under the act of 1824.

Joseph C. Brown surveyed the village in 1839, including in his survey many parcels, and even whole blocks, within which no confirmations were ever made or possession proven. The northern part of the commons, which is covered by blocks, is the village as surveyed by Mr. Brown. Now what must be the boundary of the common on the side next to the village, from which the expected survey is to be made to depart southerly, I cannot determine.

[See accompanying diagram A, betw. pages 196 and 197; line 139, 24 ch's on diagram A.]

If the southern line of the common-field, prolonged through the village to the Mississippi river, which the board ordered on the 15th June, 1808, to be run "for the purpose of ascertaining the length of said line in French arpens," and which was run by Silas Bent, on the 17th of same month, is to be taken for the commons line nearest to the village, and thus become the northern

boundary of the common, then this line (which appears to have been only experimental) will cut through the village, and leave south of it a portion thereof, on which are lots, confirmed upon possession prior to 1803. Besides that, the portion of the present common north of the village will have to be abandoned as such, and as that strip does not contain any village lots and out-lots, nor common-field lots, it would become public land.

As to this northern part of the common of Carondelet, it is proper to remark here, in justice to the inhabitants of that village, (though with the express understanding, it is not for the purpose of disturbing the present northern boundary of their common, as established by Mr. Brown.) that the line "two arpens below the Sugar Loaf," was originally the northern boundary of the common of Carondelet, and the southern line of the common of St. Louis, in the survey of James Mackey, in 1806, for 4.293 arpens of this latter tract, which was produced in evidence by the people of St. Louis to the board, on the 10th May of that year, in support of their claim thereto, and which quantity of 4,293 arpens was the amount of said claims, and, therefore, became also the amount of the confirmation by the act of 1812.

Accomp'y Diag. A.

Accop'y Diag. B.

A. S. P. II, p. 549.

Again, on the 29th July, and 23d Nov., 1825, the inhabitants of St. Louis proved by B'te Riviere, the southern line of their commons to be almost one or two arpens below the Sugar Loaf—that is, just as Mackay had fixed it in 1806.

Hunt's minutes No. 2, p. 109, and No. 3, p. 85.

The people of Carondelet do not appear to have ever given or proven the north boundary of their common, under any of the land laws of the U. States.

This boundary having been fixed by the inhabitants of St. Louis, in the survey of and depositions upon their own commons, I think we may take for granted that they left to their neighbors of Carondelet only that which was strictly belonging to them, and that the northern boundary of the latter's commons, if no survey had as yet been made thereof, would be one and the same with the present southern boundary of the St. Louis common.

Diag. B, and Hunt's minutes No. 2, p. 109, and 3, p. 85.

2d. The Secretary says: "If, therefore, that quantity (6,000 arpens) can be had without interfering with the rights of others, which had vested prior to the act of confirmation, the village of Carondelet is entitled to have it laid off."

It is understood by the rights of others, which *has* vested prior to the confirmation of the commons by the act of 13th June, 1812, to wit:

1st. Only the tract of Julian Chouquette of 640 arpens, confirmed by the board on the tenth June, 1811, and the few village lots also confirmed by the said board?

Doc't K, of Rep't of 15th April, 1840.

2d. Or, in addition to the claims just described, the tract of 35 arp's of Gabriel Constant, surveyed in 1796, and confirmed by the act of 1816, and the village lots confirmed by the acts of 1812 and 1824?

Doc't L, of Rep't of 15 April, 1840.

3d. Or, in addition to the 2 above classes, the tracts confirmed by the act of 4th July, 1836, but which were founded on concessions prior to the oldest mention in our records of the commons of Carondelet—that is, the declaration of Gov'r Trudeau, of 7th Dec'r, 1796, on the petition of J. B. Gamache, to wit:

A, of Rep't of 15 April, 1840.

N, of Rep't 15 April, 1840. Survey No. 3,067, Dec. No. 60, Gabriel Cerré, concession dated 15th March, 1789.

R, do. do. do. Survey No. 3,068, Dec. No. 279, Sophia Bolage, concession dated 3 June, 1796.

P, do. do. do. Survey No. 2,993, Dec. No. 121, Pierre Delor, concession dated 6 Dec'r, 1796.

Q, do. do. do. Survey No. 3,119, Dec. No. 170, J. B. Martigny, concession dated 25 April, 1783.

See transcript of decision. Survey No. 3,317, Dec. No. 144, J. B. Deschamps, concession dated 25 May, 1783.

Besides the three categories just mentioned, there are still within the Carondelet common other claims, which I consider as being without the control of this office:

Accomp'y Doc. C. 1st. A tract of 4 arpens square granted to Louis Puyot, on the 5th May, 1788; the only evidence of title is the concession. It was never acted upon by the board or the recorder, and is therefore not confirmed by any act of Congress. It was, nevertheless, surveyed by Mr. Brown in 1839, though I suppose merely at the request of the claimant.

Accomp'y Diag. A.

2d. Abstract of 8 by 25 arpens, granted to Gabriel Constant, on 6th Dec'r, 1796; it stands in the same condition as that of Puyot, and was laid down on plat A, as well as could be from the loose data in the concession.

Accomp'y Doc. D.

3d. The Gamache tract, of 6 by 40 arpens. On the 4th February, 1850, Com'r Butterfield transmitted to sur. gen'l Clark a copy of his communication of same day to Messrs. Holmes & Whittelsey of this city, containing his decision, that Gamache's lot not being embraced in the list returned by recorder Hunt, under the 3d section of the act of the 26th May, 1824, of all the lots confirmed by the same act, neither the Comm'r nor the sur. gen'l

has the power to treat it as confirmed and entitled to an approved survey; and on the 20th March, 1850, Mr. Butterfield informed this office, that pursuant to the appeal of Messrs. Holmes & Whittelsey from the above decision of the 4th of Feb'y of same year, he had laid the matter before the Secretary of the Interior for his consideration and decision; since then, nothing has been received on the subject.

In fine, the U. States have made a reservation of 1,702 acres, within the common of Carondelet, for the accommodation of Jefferson Barracks.

This tract has been surveyed under the direction of the War Department. As it was not laid down on the plats, sur. gen'l Clark, on the 16th Dec'r, 1851, asked from your office for an authenticated copy of the plat of the reservation, and on the 7th April, 1852, the Com'r furnished this office with a diagram obtained from the Topographical bureau, dated the 26th Jan'y, 1852, and signed J. J. Abert, col. corps top. eng'rs; but on examination this diagram was found to be an exact copy of that lettered X, which accompanied Gen'l Milburn's report of 15th April, 1840, on which the Barracks tract is not laid down, though the Secretary of War, in transmitting it to the Com'r, describes the same as being "a copy of the map and field-notes of the 1,702 acres constituting the Jefferson Barracks tract near St. Louis."

Without prejudging the nature of your instructions asked for concerning the points in this communication, I will state what would, in my opinion, if the Secretary's decision is to be carried into effect, be the best manner to do it, in justice to all concerned, and in the view of lessening as much as possible the litigation that the consummation of the measure will necessarily give rise to, because it will bring new interests in conflict with interests that the survey of Brown, in 1834, seemed to have permanently fixed, and which have been vastly enhanced during this period of time.

1st. To retrace and connect the reservation of the 1,702 acres around Jefferson Barracks; for which purpose it will be necessary to furnish this office with the plat and field-notes (in order to identify corners) of the survey of that military tract by the War Department.

2d. To enclose the blocks of the village of Carondelet, surveyed by Mr. Brown, in a single tract, by running the lines 1, 2—2, 3—3, 4—4, 5—5, 6—6, 1.

3d. To consider the village tract and surveys No. 904 for Julien Chouquette; No. 2,033 for Gabriel Constant; No. 3,067 for Gabriel Cerré; No. 3,068 for Sophia Bolage; No. 2,993 for Pierre Delor; No. 3,119 for John B. Martigny; and No 3,317 for Jno. B. Deschamps, as "rights of others which vested prior" to the act of 13th June, 1812, which confirmed the common of Carondelet.

4th. To obtain a decision from the Interior Department upon the claim of Gamache, so that, as the case may prove, it be surveyed in behalf of his reps., or otherwise included in the 6,000 arps. to be laid off as common.

5th. To take no notice of the unconfirmed claims of Gabriel Constant and Louis Puyot;

And then to begin the survey of the 6,000 arpens for the commons at its present N. E. corner, and follow Brown's northern, western, and eastern lines, until two points are reached on the western boundary and the Mississippi river, between which a line run parallel with the present south line of the common; parts of tracts also north of that line, which I have considered as valid interferences with Brown's survey.

If the inhabitants of Carondelet have to submit to the decision of the 25th Jan'y last, this construction of it and its being carried out, will, I am satisfied, be the means of their sustaining the least injury thereby.

As I had no authority to call for documents from the parties, nor was requested to report on the case, the above suggestions are made without regard to the request contained in the letter of Messrs. Holmes and Whittlesey of 22d Feb'y last, or to the protest in that of James B. Walsh, esq., mayor of Carondelet, of the 23d of same month, nor to the verbal agreements of interested persons, but only with the single purpose of fulfilling the duties imposed upon this office by the instructions of the 5th Feb'y last.

Docs. E. & F.

Your early attention to the matter is respectfully solicited.

I am, very respectfully, sir, your ob'd't servant,

D. A. SPAULDING, *Sur. General.*

To COMM'R OF THE GEN'L LAND OFFICE,
City of Washington.

NOTE.—The above letter was accompanied by the following papers:

A.—A diagram of the Carondelet common.

B.—A copy of Mackay's survey of St. Louis common, made in 1806.

C.—Translation of grant to Puyot.

D.—Translation of grant to Constant.

E.—Copy of letter from Messrs. Holmes and Whittlesey of 22 Feb'y, '53, to sur. gen'l, Rec. to the Gamache claim.

F.—Copy of letter from J. B. Walsh, mayor of Carondelet, protesting against the Secretary's decision.

Cert. of Sur. Gen'l Loughborough.

OEFICE OF THE SURVEYOR GENERAL FOR ILLINOIS AND MISSOURI,
St. Louis, Nov. 15th, 1853.

It is hereby certified that the letters, documents, and diagrams

Same to Joseph Le Blond and others.

3d. Same to Joseph Le Blond et al., 9th Dec'r, 1845.

GENERAL LAND OFFICE, *December* 9, 1846.

GENTLEMEN: Your petition to the President of the United States, praying that the commons of the town of Carondelet be surveyed as established and recognised by surveyors general Rector, McCrea, Milburn, and others, has been referred to this office; and in answer I have to state, that the title of the town in this common was made the subject of a special report by the Solicitor of this office, Judge McRoberts, on the 22d October, 1840, (No. 300) who, after reviewing the whole subject, states, that "from a full examination of the subject, I have come to the conclusion that the lands included in the survey of the commons were not granted by the Spanish government to the inhabitants of Carondelet, for the purpose contemplated, nor for any other purpose, and that the endorsement of Lt. Gov. Trudeau upon Gamache's petition was not a grant of the land, and can only be treated as an intention to reserve a part of the lands south of the river; in his own words, 'to furnish wood necessary for the village of Carondelet,' and that the 'fee simple in the soil did not, and was not intended to pass out of the Spanish crown at the date of the cession, and as such passed to the United States.'

"That the act of Congress of June 13th, 1812, did not confirm the land, as surveyed by Mr. Rector, to the village of Carondelet, nor was it affected by the act of 27th of January, 1831. I, however, believe that good faith to the citizens of Carondelet, and in fulfilment of what they were led to believe was the intention of Lt. Gov. Trudeau to do in the premises, that Congress will make a grant of some portion of the lands for the purpose contemplated."

He then suggested that about 7.700 of this common should be reserved for the future action of Congress, and that the balance, amounting to several thousand acres, should be surveyed and sold as public land; and that of the reservation thus made, Congress could grant the town the 6,000 arpens, which were all the inhabitants claimed.

Acting on this opinion, this office, on the 20th January, 1841, sent instructions to the sur. gen'l at St. Louis, in conformity with the recommendations therein contained, but the surveys thus directed were not executed.

On the 11th July, 1845, Alexander Kayser, of St. Louis, Mo., as attorney for numerous farmers and settlers on this common, applied for immediate action on this case, in accordance with the opinion of the Solicitor above quoted in part, as modified by the decision of the supreme court of Missouri at the July term of 1844, in the case of Dent vs. Bingham. On a full and thorough examination of the whole matter, this office decided that it would be

inexpedient to direct the survey of those lands until further action by Congress on the 1st Sept., 1845. This decision, which has ever since been adhered to, will enable the town of Carondelet and the settlers on this common to present their respective claims to Congress, who can best determine the meaning of the act of 27 January, 1831, and the extent of the grant to the town contemplated thereby.

Very respectfully,
Your obd't servant,
JAMES H. PIPER,
Acting Comm'r.

JOSEPH LE BLOND, Esq., and others,
Inhabitants of the Town of Carondelet,
St. Louis County, Missouri.

Pierre Delor's appl'ct'n.

4. Pierre Delor's application for a pre-emption, and the Commissioner's letter thereon, Aug. 6th, 1847, &c. For land not subject to entry.

I, Peter Delor, of St. Louis county, Missouri, being the head of a family, and a citizen of the United States, have, on the 22d day of July, 1847, settled and improved frac'l section 9, in township 44, in range 7 east, in the district of lands subject to sale at the land office at St. Louis, Mo., and containing $37\frac{40}{100}$ acres, which land is reserved from sale on account of the claim to said fraction by the inhabitants of the town of Carondelet, Mo., and I hereby declare my intention to claim the said tract as a pre-emption right under the act of 4th Sep., 1841, provided the same shall become subject to entry under the provisions of said act.

Given under my hand this 22d day of July, 1847.

his
PETER ⋈ DELOR.
mark.

In presence—
THO. WATSON, witness to the above mark.

Filed 22 July, 1847.

N. C. OSBORN.

Com'rs Letter on same.

GENERAL LAND OFFICE,
Aug. 6th, 1847.

SIR: Your letter of the 27th ult., in reference to the action had by you on the application of Peter Delor, for a pre-emption

under act of 4 Sept., 1841, to *fil* sect. 9, T. 44 N., R. 7 E., has been received.

This office possesses no official plat indicating the existence of any tract of public land of the description above given; your letter in reference to the above claim to such a tract being the first information received, that any land in said township in the local position of sect. 9 had been delineated by the sur. gen'l on any plat, otherwise *otherwise* than as claimed as or belonging to Carondelet common.

From your letter it appears that you refused to allow this pre-emption claim of Delor, because of the reservation of the land for said Carondelet common, your predecessor having for like reasons refused to dispose of it in any way.

Your action in this respect is approved, and for the reasons given by you, a refusal to entertain the claim at all, even impliedly, to the extent reported, would have been equally tenable and more proper.

The claim (independent of the vital objection that it could not be legally made to reserved land) appears from the facts in regard to the nature of the settlement reported by you, as exhibited by the testimony filed, to be devoid of any merits.

Respectfully, your ob't serv.,
RICHARD M. YOUNG, *Comm'r.*

To REGISTER, *St. Louis, Missouri.*

LAND OFFICE, ST. LOUIS, MO.,
Jan'y 11th, 1854.

I hereby certify that the foregoing is correctly copied from the declaratory statement of Peter Delor, and a letter written by the Commissioner of the General Land Office to this office, now on file in this office.

D. C. TUTTLE, *Register.*

Com'r of Gen'l Land Office to Wm. C. Jones.

5th. Commissioner of General Land Office to Wm. C. Jones, Aug. 22d, 1848.

GENERAL LAND OFFICE,
Aug. 22d, 1848.

SIR: In answer to your communication of the 19th inst., I have to state that there is no application pending in this office for a confirmation of the survey of the commons of Carondelet made by Joseph C. Brown, deputy surveyor, in March, 1834. On the 14th February, 1846, this office decided that it would be inexpedient to interfere in any manner with that survey, and that the lands within it are not subject to pre-emption or ordinary entry, having been reserved to satisfy the claim of the town. Notwithstanding this

decision the land officers, it is stated, have allowed entries within that survey, and Wilson Primm, esq., in a letter of the 9th instant, requested that all such entries might be cancelled.

In view of the decision above mentioned, this request will be complied with, but the question as to the extent of the grant for a common will be left for the decision of Congress.

Very respectfully, your obed't servant,

RICHARD M. YOUNG,
Commissioner.

W. C. JONES, Esq.,
Washington City, D. C.

Same to Wilson Primm.

6th. Same to Wilson Primm, Aug. 24, 1848.

GENERAL LAND OFFICE,
Aug. 24, 1848.

SIR: In answer to your letter of the 9th inst., I have to state that under the decision of this office, the lands within the commons of Carondelet, as represented by the surveys made by Joseph C. Brown, deputy surveyor, in March, 1834, are not regarded as subject to pre-emption or ordinary entry, but as reserved to satisfy the claim of the town of Carondelet, under the acts of 13th June, 1812, and 26th May, 1824; hence all such entries will be cancelled, but the question of the extent of that claim will be left to the decision of Congress.

The land officers at St. Louis were this day instructed to report the reasons that induced them to permit entries within the limits of Brown's survey, and also to report all such entries that may be cancelled.

The same principle will apply to the land supposed to be vacant between the commons of Carondelet and those of St. Louis.

Very respectfully, your obd't servant,

RICHARD M. YOUNG,
Commissioner.

WILSON PRIMM,
St. Louis, Missouri.

GENERAL LAND OFFICE.

I, John Wilson, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages 1 to 9 inclusive, are true copies from the records of this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of [SEAL.] Washington, this 5th day of November, 1853.

JOHN WILSON,
Commissioner.

List of 15 *Entries of U. S. Reg., St. Louis.*

7th. List of 15 entries at the office of the register of the United States, at St. Louis, of lands subdivided into sections within the Brown's survey of 1834, made in the year 1847, and Commissioner's letter thereon of 1848.

Township No. 43 North, Range No. 6 East, District of St. Louis, Missouri.

Description of the Tract.—Part of Section.	Section.	Township.	Range.	Contents.	
				Acres.	100ths.
Pre. 41, E. ½ of S. E. ¼	1	43	6 E.	80	
Pre. 41, S. W. ¼	"	"	"	160	00
P. E. 41, S. E. fr'l ¼ of S. W. ¼	2	"	"	40	00
P. E. 41, N. E. fr'l ¼	3	"	"	76	12
P. E. 41, N. W. fr'l ¼	"	"	"	152	72
P. E. 41, E. ½ of N. E. ¼	12	"	"	80	00
P. E. 41, N. W. ¼ of N. E. ¼	"	"	"	40	00
P. E. 41, S. W. ¼ of N. E. ¼	"	"	"	40	00
P. E. 41, E. ½ of N. W. ¼	"	"	"	80	00
P. E. 41, W. ½ of N. W. ¼	"	"	"	80	00
P. E. 41, N. E. ¼ of S. E. ¼	"	"	"	40	00
P. E. 41, S. E. ¼ of S. E. ¼	"	"	"	40	00
P. E. 41, W. ½ of S. E. ¼	"	"	"	80	00
P. E. 41, E. ½ of S. W. ¼	"	"	"	80	00

Rate per Acre.	Purchase Money.	Name of the Purchaser.	Date of Sale.
$1 25	$100 00	Jacob Haster, jr	Nov. 18, 1847.
1 25	200 00	John Giphard	Nov. 17, 1847.
1 25	50 00	Casper Link	June 29, 1847.
1 25	95 15	Catharine Schmit	Jan'y 4, 1856.
1 25	191 15	James Eddie	May 26, 1847.
1 25	100 00	Jacob Haster, sr	Nov. 17, 1847.
1 25	50 00	Daniel Roneclcer	Nov. 18, 1847.
1 25	50 00	Charles Hoster	Nov. 17, 1847.
1 25	100 00	William Schleck	Nov. 18, 1847.
1 25	100 00	Antoine Schultz	Nov. 19, 1847.
1 25	50 00	William Stuckenbrok	Nov. 19, 1847.
1 25	50 00	John A. Merline	Nov. 18, 1847.
1 25	100 00	Peter Baker	Nov. 18, 1847.
1 25	100 00	Lawrence Tauzberger	May 27, 1847.

Number of Receipts and Certificate of Purchase.	To whom Patented.	Date of Patent.	Where Recorded.	
			Volume.	Page.
16,478	See Com's letter of Dec. 21, and R. and R.'s reply of Dec. 31st, 1855.			
16,477	See Com's letter of Dec. 21, and R. and R.'s reply Dec. 31st, 1855.			
16,196	See Com's letter of Dec. 21, and R. and R.'s reply Dec. 31st, 1855.			
28,172				
16,134	See Com's letter of Dec. 21, and R. and R.'s reply of Dec. 31st, 1855.			
16,472				
16,482	See Com's letter of Dec. 21, and R. and R.'s reply of Dec. 31st, 1855.			
16,473	See above.			
16,483	See Com's letter of Dec. 21st, and R. and R.'s reply of Dec. 31st, 1855.			
16,487	See Com's letter of Dec. 21, and R. and R.'s reply of Dec. 31st, 1855.			
16,488	See Com's letter of Dec. 21, and R. and R.'s reply of Dec. 31st, 1855.			
16,479	See above.			
16,477	See Com's letter of Dec. 21, and R. and R.'s reply of Dec. 31st, 1855.			
16,140	See Com's letter of Dec. 21, and R. and R.'s reply of Dec. 31st, 1855.			

LAND OFFICE, ST. LOUIS, MISSOURI,
Register's Office, June 21st, 1858.

I, Paris Papkin, register of the United States land office at St. Louis, Missouri, do hereby certify that the above and foregoing is fully and correctly copied from the records of this office.

Given under my hand, this the day and year aforesaid.

PARIS PIPKIN, *Register.*

Commissioner's Letter of 1848, *on above entries.*

GENERAL LAND OFFICE, *Aug.* 24, 1848.

GENTLEMEN: It has been represented to this office that a number of entries have been permitted by you within the limits of the commons of Carondelet, as represented by the survey thereof made by Jos. C. Brown, deputy surveyor, in March, 1834. The whole

of the lands within those limits, and also that north of Brown's survey and south of the commons of St. Louis, are regarded by this office as reserved to satisfy the claim of the village of Carondelet, under the acts of 13th June, 1812, and 26th May, 1824, and in future you will also please consider them as reserved from sale or entry of any kind, unless otherwise instructed by this office.

You will please report all the entries of any of these lands which have been permitted, and your reasons in detail for so doing, at your earliest convenience.

Very respectfully, your obedient servant,

RICHARD M. YOUNG,
Commissioner.

REG'R and REC'R, *at St. Louis, Missouri.*

LAND OFFICE AT ST. LOUIS, MO.,
June 25th, 1858.

I, Paris Pipkin, register of the United land office at St. Louis, Missouri, for the district of St. Louis, Missouri, do hereby certify that the above and foregoing is correctly copied from the original letter of Commissioner of General Land Office, and now on file in this office.

Given under my hand this day and year above written.

PARIS PIPKIN, *Register.*

8th. Copy of United States surveys of 1821, as made by Joseph C. Brown, as found in the register's office, at St. Louis.

Appeal of Car. by Att'ys to Com. of Gen. Land Of.

9th. Appeal of Carondelet to Commissioner of the General Land Office, by attorneys, 30th Jan'y, 1852.

Copy.

CITY OF WASHINGTON, *January* 30, 1852.

Hon. J. BUTTERFIELD, Commissioner of the General Land Office:

SIR: The undersigned, as counsel, represent the interests of the city, formerly the town of Carondelet, as also the interests of individuals, in regard to the Carondelet common.

The title to this common was confirmed by the act of Congress of the 13th June, 1812, according to possession and user, prior to the 20th December, 1803. This act vested the title to common in the inhabitants of Carondelet, leaving the extent and boundaries thereof to be determined, as were those of the private lots, by proof of inhabitation, cultivation or possession, which, in regard to a common, would necessarily mean user as a sign of possession.

By the second section of the act of 26th May, 1824, it was made the duty of the surveyor general to survey and designate the commons confirmed by the act of 1812; and under the requirements of

this act, and under the instruction of the surveyor general for Missouri and Illinois, dated the 10th March, 1834, Joseph C. Brown, a deputy surveyor of the United States, during the same month, made and returned to the surveyor general his survey of the Carondelet common, which survey was approved by the surveyor general on the 29th July, of the same year.

This survey was made without any examination of or authority to decide upon the facts on which the extent and boundaries of a confirmation made twenty years before depended, and could therefore be of no effect upon the vested rights of the inhabitants of Carondelet, or of individuals holding under prior grants or confirmations made by the United States, but being the act of the United States, that survey is regarded by *the act of the United States that survey is regarded by* the undersigned as conclusive against the United States, and beyond the control or revision of any ministerial officer of the government.

After a lapse of several years, however, the department over which you preside undertook to review Brown's survey, and issued several orders and instructions respecting it, many of these orders and instructions injuriously affecting the interests which the undersigned represent, obstructing the disposition of the land embraced within that survey, and materially retarding the growth and prosperity of the city of Carondelet and its environs.

Although the undersigned cannot believe that the orders and instructions to which they refer will or can, in any manner, impair the legal rights of the inhabitants of Carondelet when brought to the test of judicial investigation, still they are not without their injurious effect in throwing a cloud over the title to the common, and being, as the undersigned believe, illegal, they respectfully ask that they be rescinded and set aside.

In order to obviate an objection which we have heard urged against the claim which we prefer to you, we offer that the city of Carondelet, as a corporation, will make and deliver to the United States a deed in fee simple for the tract of seventeen hundred and two acres included within Brown's survey, and upon which the Jefferson barracks are established.

The city of Carondelet also claims title to the land lying between the boundary line of Brown's survey of the Carondelet common and a line which, run in a western direction from the well known "Sugar Loaf" or "Pain de Sucre" point, will strike the northeast corner of the common-fields of Carondelet; and in order that they may be enabled the more readily and easily to assert and maintain this their claim of title before the judicial tribunals of the country, they respectfully ask that the surveyor general of Missouri and Illinois be instructed at once to make an official survey of the same.

The undersigned take leave to remark, that they do not seek to

set aside or change the survey of the St. Louis commons, or of any private tract of land. All they ask is, that the north line of the Carondelet common may be surveyed according to the evidence, and so far as that survey may conflict with others, the title will be determined, as it ought to be, according to the proofs which may be exhibited by the respective claimants, as it was intended it should be, by the act of 1812, which left the extent and boundaries of confirmations open, to be determined judicially upon proofs, and not otherwise.

Respectfully,

(Signed) H. S. GEYER,
WILSON PRIMM,
WILLIS L. WILLIAMS,

For claimants, in what are termed the commons of Carondelet, south of the river des Peres.

Report of Comm'r Butterfield, March 4th, 1852.

10th. Report of Commissioner Butterfield of the 4th March, 1852.

GENERAL LAND OFFICE,
March 4th, 1852.

Messrs. Geyer, Primm and Williams,
respecting Carondelet Commons:

GENTLEMEN: I have received your application of the 30th of January last, and other arguments and papers since presented, in regard to the Carondelet commons claim.

Action on that portion of the application of the two first named gentlemen, which calls for new survey for Caron. to extend from the north line of Brown's survey to the "Sugar Loaf," is deferred at the request of Wm. M. McPherson, esq., att'y for St. Louis, until May next—say 31st of that month—the postponement desired not having been resisted at this office by any of the parties interested.

In your present application, and in the arguments filed, reference is made to the survey executed by Brown in 1834 for the "com's of Caron.," and it is contended that said survey is "conclusive against the U. S., and beyond the control of any ministerial officer of the gov't." You at the same time advert to the department having undertaken to "review Brown's survey," issued several orders and instructions "injuriously affecting the interests" you represent, &c.; and as you "believe them illegal," you ask that they be rescinded and set aside.

The orders and instructions thus adverted to are, doubtless, the report No. 244, dated Aug. 6th, 1839, of Solicitor Birchard, the report No. 300, of Solicitor McRoberts, dated 22d October, 1840,

and the instructions, dated 20th Jan'y, 1841, of Commissioner Whitcomb to Sr. Gen. Milburn, in which Mr. Whitcomb concurred with Solic'r McRoberts in his opinion adverse to the claim of Carondelet, but proposed to reserve, excluding all private claims and the military reservation, a certain extent of land in Brown's survey for the future action of Congress, and to throw open the residue of the lands in Brown's survey by survey and sale as public lands.

On a full examination of this matter, I find that the proceedings of Solicitor Birchard and Com'r Whitcomb were received in Sept., 1845, by Com'r Shields, who, by letter of the 1st of that month to the surv'r gen., stated that he had refused an application for the "survey of a part of the Caron. commons, directed in 1841;" and in a letter of Feb'y 14, 1846, to the Hon. J. W. Tibbats, stated that he deemed "it inexpedient to interfere in any manner with the survey of that common, as originally made by Elias Rector prior to 1817, and retraced by Joseph C. Brown, dep. sur., in 1834," &c.; that the "lands within Rector's and Brown's survey" are not "subject to pre-emption or ordinary entries, as supposed by Mr. Hockaday, they having been reserved to satisfy the claim of the town of Carondelet;" that "this office was not disposed to trouble Congress with the matter, supposing that it would be brought before that body by the parties interested; but, as Mr. Hockaday has requested prompt action, he (Com'r Shields) would recommend, in view of all the facts, that the claim of the town of Carondelet to the whole common, as surveyed by Joseph C. Brown in 1834, be confirmed, reserving so much as may be necessary and proper for the United States post at Jefferson Barracks, and all valid interferences." This course was adhered to by acting Com'r Piper and Com'r Young, and has not since been departed from.

As the decision of the Solicitor, and the instructions of Com'r Whitcomb were not executed, I regard them as overruled by the subsequent action of Com'rs Shields, (acting,) Piper and Young, and the action of the three last named of my predecessors. It has been settled that this office must not distrust or in any manner interfere with the aforesaid survey by Brown, unless Congress should otherwise order by further legislation; but that the said survey is subject to such adverse valid rights as may exist under confirmed private claims, and also to the right of the U. S. in the military reservation for Jeff. Barracks, as held in violation of law, and of the rights the U. S. possess under treaty, as the successor of Spain. I therefore regard this office, under existing laws, as having no further power or control over the subject.

I have further to add, that I have made a report of all the facts to the committees of Congress upon a call for information in the

petitions of Geo. W. Dent and F. Dent, of Missouri, representing adverse private claims.

Very respectfully,
Y'r ob't serv't,
J. BUTTERFIELD, *Com'r.*

Ap'l to Sec't'y of Inter'r, June 8th, 1852.

11th. Appeal to Secretary of the Interior, 1852.

GENERAL LAND OFFICE,
June 8th, 1852.

SIR: On the 26th March last, the Commissioner, on the appeal of Messrs. Read & Bryan, attorneys, submitted to you the papers in the "Carondelet commons" case, with a transcript of his report, dated 4th March, 1852, containing his decision, in which it is held, in substance, that the survey of these "commons," as executed in the year 1834, by Joseph C. Brown, U. S. deputy surveyor, should be adhered to unless otherwise ordered by Congress, excepting from it the military reservation; and that other conflicting rights, within the limits of said survey, are properly determinable by the judiciary.

Before that report was prepared, an application was made by the Hon'ble H. S. Geyer and Wilson Primm, esq., of Missouri, for a new survey of the north boundary of Carondelet, to begin on the Mississippi, at a mound or hill called the "Sugar Loaf," and extended westward to the base line of the commons-fields of that village.

A decision on that application was deferred until the 31st May, (ult'o,) at the request of Wm. M. McPherson, esq., of St. Louis, and with the consent of parties.

On the 3d instant, Messrs. Geyer and McPherson called the case up in person at this office, and pursuant to my request of that date, the papers, which were submitted to you on the 26th March last, were sent back in order that such of them as relate to the said application for a new survey of the north boundary line of Carondelet might be examined in relation to that point.

They have accordingly been considered, being herewith returned, and in reference to that application the following additional papers are also sent herewith, viz:

No. 1 a. Argument filed on the 28th April last, by Hon. J. B. Bowlin, attorney in fact for Carondelet.

No. 1 b. Argument dated 25 May, 1852, of the Hon. H. S. Geyer, for the inhabitants of Carondelet.

No. 2 a. Argument received June 4th, 1852, of Wm. M. McPherson, for city of St. Louis, and others, averse to the new survey.

In addition to these arguments, I enclose—

No. 3 a. A letter dated June 5th, 1852, from A. R. Corbin, esq., and among the papers described in the schedule herewith accom-

panying the aforesaid transcript, report of 4th March, 1852; I refer to those designated as Nos. 15, 17, 18, 20, 21 and 25. These arguments and the papers in the case have been duly considered, in connexion with the acts of Congress of the 13th June, 1812, 29th April, 1816, 26th May, 1824, and 27th Jan'y, 1831, and the following is the result.

By the act of 13th June, 1812, U. S. Statutes at Large, vol. 2, p. 748, chap. 99, the village of Carondelet is confirmed in its commons, according to its right thereto; and it is made "the duty of the principal deputy surveyor for the said Territory, as soon as may be, to survey or cause to be surveyed and marked (where the same has not already been done according to law) the out-boundary lines of this village, to include its "commons." By the act of 29th April, 1816, same Statutes, vol. 3, page 325, chap. 151, providing for the appointment of a surveyor of the public lands in the Territories of Illinois and Missouri, it is made his duty to "cause to be surveyed the lands in the said Territories, the claims to which have been or hereafter may be confirmed by any act of Congress, which have not already been surveyed according to law," &c. Accordingly, "before the year 1817," a survey of the "Carondelet commons" claim was executed by Elias Rector, U. S. deputy surveyor. See plat D, and surveyor general's certificate thereto of April 15th, 1840. Subsequently, viz: on the *on the* 26 May, 1824, Congress passed an act—U. S. Statutes, vol. 4, page 65, chap. 184—making it the duty of the surveyor general "also to survey and designate, so soon after the passage of this act as may be, the commons belonging to the said towns and villages," embracing Carondelet, "according to their respective claims and confirmations under the said act of Congress" (of 1812,) where the same has not been already done.

In order that the survey already made of this claim might be properly traced out, and be connected with the surveys of the public lands, E. J. Langham, surveyor general, issued his instructions on the 16th Feb'y, 1834, to deputy surveyor Jos. C. Brown, to retrace the lines and re-establish the corners of the said survey, and that deputy did so, and made his return of survey in March, 1834. (See plat X.)

Afterwards, to wit, on the 27th Jan'y, 1831, same Statutes, vol. 4, page 435, chap. 92, an act was passed by which the U. States relinquished all their rights to the inhabitants in the commons, &c., confirmed to them by the act of 1812.

Now, here we have the act of 13th June, 1812, and 29 April, 1816, expressly making it the duty of an officer, whom the law designates, to survey this claim. He executes that duty within five years of the date of confirmation, and makes an actual survey on the ground, showing the extent and limits of the commons determined, as is the legal presumption, upon satisfactory evidence before him.

This survey is returned and filed, in the "fore part of the year 1817," in the office of the U. S. surveyor, and thereby notice is given in the proper place to every one as to what has been done. There, so far as the papers show, it remained undisputed for years afterwards, when, in view of the act of 1824, it became the duty of the surveyor to have it retraced and connected with the lines of the public surveys, in order to exhibit its position and locality in connexion with them; and this was done in March, 1834, by competent authority, and by the officer to whom the law had expressly delegated the power; and there it remained, to show what had been fixed and established as the limits of the commons, after the relinquishment act of 27 Jan'y, 1831, was passed.

I find nothing in the papers to show that from the survey prior to 1817, until the relinquishment law of 1831 was enacted, a period of about fourteen years, that any exception by Carondelet was taken to the regularity or correctness of this survey, or any application then made by the authorities of that village to reform this survey; and after an examination of the "proceedings of the board of trustees of the town of Carondelet," (paper No. 2,) and the transcript affidavits of 1825, before Recorder Hunt, and the original affidavits herewith of 1840 and 1851, referred to by Mr. Geyer, I do not see that they furnish sufficient evidence to warrant us in treating Brown's re-survey as erroneous, particularly as we find that in the year 1848, (paper 6) the inhabitants of Carondelet, in their petition to Congress, represent "that the corporate authorities of the village, 'acting' under the belief that this survey of Brown's was conclusive testimony of the extent of their claim to commons, did, in the year 1838, proceed to subdivide said lands claimed as commons into small tracts, taking for the out-boundaries the lines established by the survey of Brown," &c.; and in consideration of the facts, prayed Congress "to pass an act confirming to the inhabitants of the village of Carondelet their title to the commons, according to the survey of Brown, as made in 1834," &c.

We find, further, that if a new survey was ordered, it would not be a matter merely between the United States and Carondelet, but one in which the U. S. has no direct interest, as such new survey would include fractional section 9, which has been selected by the State, and approved to her under the act of 4th Sept., 1841; and would also embrace a portion of the commons confirmed to St. Louis by the aforesaid act of 1812, and which has been surveyed and set apart to her.

The United States, then, by these proceedings, have parted with the fee in the lands, and any question of conflicting interests in them is, in my opinion, purely a judicial one, and in which the executive can now properly exercise no control.

But recurring to the proceedings already had in respect to the survey for Carondelet, we find that an actual survey was executed

prior to 1817, by an officer whom the law ordered to make it; that thereby due notice was given to all parties concerned of what had been determined, by lawful authority, to be the true extent and limits of Carondelet commons; that Congress thus had notice of the existence of this survey when the act of 1824 was passed, directing the survey of the commons belonging to certain towns and villages, "where the same has not been already done," and that this survey remained undisputed at the passage of the last law which Congress enacted on the subject, to wit: the relinquishment act of 27 January, 1831, and that then no effort was made by Carondelet to have said survey re-formed or changed; that afterwards, in 1834, a competent officer, acting within the sphere of his authority, re-traced and connected the limits of this survey with the lines of the public surveys, and that no objection to the north boundary was brought to the notice of this office until after a lapse of more than 34 years.

These facts considered, I hold that the question of limits on the north ought to be treated by the department as settled, so far as executive action is concerned, and that the inhabitants are estopped from a new survey, as now applied for.

I therefore decide that the survey before 1817, which was retraced by Brown in 1834, should be adhered to, under the stipulations specified in the Commissioner's report of the 4th March, 1852, and that this office is not authorized to order a new survey on the north boundary.

A copy of this will be furnished to Messrs. Geyer, Bowlin and McPherson, the first two for, and the last adverse to Carondelet.

With great respect,
Your obd't servant,
JOHN WILSON,
Acting Commissioner.

Hon'ble A. H. H. STUART,
Secretary of the Interior.

GENERAL LAND OFFICE.

I, John Wilson, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages 1 to 6 inclusive, is a true copy from the record, vol. 18, pages 236 to 242, inclusive, of this office.

In testimony whereof I have hereunto subscribed my [SEAL.] name and caused the seal of this office to be affixed at the city of Washington, this 6th day of October, 1852.

JOHN WILSON,
Commissioner.

Dec'sn of Sec. of the Int., Feb'y 23, 1855.

12th. Decision of Secretary of the Interior, of the 23d Feb'y, 1855.

DEPARTMENT OF THE INTERIOR,
February 23*d*, 1855.

SIR: In your letter of the 26th March last, you ask what disposition is to be made of the lands which may be detached by a new survey, from Brown's survey of Carondelet commons, and which are not included in any other claim; and with your letter of the 2d of April last you submit a communication from the surveyor general of Illinois and Missouri, asking further instructions in relation to certain points named therein, in order to enable him to carry out the decision of my predecessor in the case.

To arrive at a satisfactory conclusion on this subject I found it necessary to examine the whole question involved, when it appeared that the decision of my predecessor was only partial, and actually left the whole case open. I have therefore carefully examined it as one of original jurisdiction; and, after having given due weight and consideration to all the evidence submitted, and to the arguments presented both for and against the claim of the inhabitants of Carondelet, and the action heretofore had by this department, I am clearly of the opinion that undue importance has been given to the decision had by the supreme court of the State of Missouri, in the case of Dent vs. Bingham, on which the decision of my predecessor is based, especially as that decision was arrived at through a division of opinion on the part of the then judges sitting in the case, two of these judges having come to the same conclusion on different and opposite grounds, and the third not only dissenting from the opinions expressed by the majority of the court, but also from the decision then made by them, and more especially *at* the concurrence of Judge Tompkins, one of the two judges above alluded to, was based on an opinion previously given by him, "That the acts of 1812 and 1831 availed the claimants of village lots, out-lots and commons nothing, unless they presented their claims before the recorder of land titles;" which view has been subsequently overruled by the same court, and also by the Supreme Court of the U. States, in the case of Guitard vs. Stoddard, 16th Howard, pp. 494 to 513.

Congress, by the act of June 13th, 1812, confirmed the right, title, and interest of the inhabitants of Carondelet to common, and designated the principal deputy surveyor as the person who should determine by a survey the extent of that common; and this survey was made in 1816 or 1817 by the proper officer. On the 26th of May, 1824, Congress passed another act, requiring, among other things, that the surveyor general should survey and designate the commons belonging to the several villages, according to their respective claims and confirmations, under the act of 1812, where

the same had not already been done. Carondelet commons was "already" surveyed, and was not therefore affected by the act of 1824.

On the 27th January, 1831, Congress relinquished to the inhabitants of the several towns or villages all the right, title, and interest of the United States in and to the commons, as confirmed to them by the act of 1812.

As Rector's survey of 1816 or 1817 was made prior to the survey of the surrounding public lands, it was necessary under the act of 1831 to connect it with such surrounding lands; and E. T. Langham, the then surveyor general, by virtue of authority duly vested in him, instructed deputy surveyor Joseph C. Brown to retrace Rector's lines of the Carondelet survey, to connect it with the adjoining surveys, by establishing the proper corners at the intersection of the lines thereof. Brown, in 1834, under these instructions, retraced Rector's lines, and states in his returns to the surveyor general that Rector's corners, and his western and southern boundaries, were easily found and identified by him.

Under this state of facts, the question to be determined appears to be, does the act of 1812, the operations had under that act, and the subsequent acts of 1824 and 1831, of themselves constitute a title in Carondelet to the whole extent of the survey made by Rector in 1816 or 1817, and retraced by Brown in 1834?

The Supreme Court of the United States in Strother vs. Lucas—"a confirmation of title by act of Congress not only renders it a legal title by act of Congress—*not only renders it a legal title by act of Congress—not only renders it a legal title*, but furnishes higher evidence of that fact than a patent, inasmuch as it is a direct grant of the fee by the government itself, whereas a patent is only the act of its ministerial officers."

And in the case of Mackay vs. Dillon, the same court says: "The act of Congress of 1812, confirming the claims to commons adjoining and belonging to the town of St. Louis, did not define the extent and boundaries of these claims, nor adapt the evidence laid before the board of commissioners for that purpose. The boundaries of the claims thus confirmed were designedly left open to the settlement of the respective claimants by litigation in the courts of justice, or otherwise."

The act of 1831 was passed with a full knowledge by Congress of all that had been previously done in the case, to wit, the survey by Rector and the reservation of the Jefferson Barracks tract. Such is the legal presumption; and in this case it seems to me sound.

The reservation for the barracks, though not express, is implied, as in the case of Fort St. Marks, Florida, for which see the case of Mitchell et al. vs. The United States, 15 Peters, pp. 52 to 92.

In view, therefore, of all the facts and circumstances of this

case, and of the opinions expressed by the highest legal tribunal known to our laws, I am compelled to the conclusion that, as the surveys of 1816 and 1834 were executed by competent authority, were duly approved, and were for a series of years acquiesced in by the inhabitants of Carondelet, both the government of the United States and the inhabitants of Carondelet are estopped and concluded thereby. My decision therefore is, that the survey of 1816 or 1817, as retraced by Joseph C. Brown in 1834, should be sustained, excluding, of course, the 1,702 acres heretofore set apart and reserved for the use of the military post at Jefferson Barracks, and that the parties claiming adversely to Carondelet should not be hindered thereby from establishing and settling their rights before the judicial tribunals of the country.

You will furnish the surveyor general of Illinois and Missouri with a copy of this decision, and instruct him to have the lines of the original reservation for Jefferson Barracks properly run and marked in the field, if that has not already been done, and to make the usual and proper returns thereof to your office and to that of the register of the land office at St. Louis.

All the papers received in relation to this case are herewith returned.

Very respectfully, your ob'd't servant,

R. McCLELLAND, *Secretary.*

To the COMMISSIONER OF THE GENERAL LAND OFFICE.

Dec'sn of Com. Gen'l Land Off'ce, 26th Feb., 1855.

13th. Decision of the Commissioner of the General Land Office of the 26th of February, 1855.

GENERAL LAND OFFICE, *February 26th*, 1855.

SIR: Under date the 26th January, 1853, the Hon. A. H. H. Stuart, then Secretary of the Interior, communicated to this office his decision in the "Carondelet common case," and on the 28th of that month this office addressed him with a view to elicit further information, so as to carry out the decision of the appellate authority.

The surveyor general at St. Louis was apprized of these proceedings by letter from us, dated February 5th, 1853, enclosing a copy of the decision aforesaid. The subject passed over from the late administration, and necessarily came before the present Secretary of the Interior, the Hon. R. McClelland, who has fully examined the whole subject, and rendered a final decision covering all the points raised on the matter.

A copy of the decision, dated 23d February, 1855, I herewith transmit for your information and government. You are directed to make its purport known to the parties interested.

Pursuant to that decision, you will make out a connected diagram in duplicate, one for this and one for the land office; on that

diagram you will exhibit the survey sanctioned by the said decision, to wit: the survey by Rector, as retraced by Jos. C. Brown in 1834, showing the connections of the same, and taking care expressly to exclude therefrom the military reserve of 1,702 acres at Jefferson Barracks, if you have the correct field-notes; but if not, it will be necessary to have the lines of that reserve properly run out and marked in the field in the first instance; you will also take care to designate on said diagram all other claims adverse to Carondelet, setting forth on said diagram the nature of each of them, according to the records, and in your act approving the official diagrams you are directed to make a distinct and unqualified exclusion from the said survey of the military reserve at Jefferson Barracks, as the absolute property of the United States, set apart for their own special use, and in exclusion from any laws for the disposal of the public domain; you will also declare in your approval of the "Carondelet commons" survey, that as regards the rights of all other claimants within the limits of that survey, who hold adversely to Carondelet, your approval is in no measure intended, nor shall it be construed, to interfere with the rights of such adverse claimants to seek a judicial settlement of their several interests.

Very respectfully,
Your obed't serv.,
JOHN WILSON, *Comm'r.*

JNO. LOUGHBOROUGH, Esq.,
Sur. Gen'l.

A. H. Evans's Test.

A. H. Evans, being duly sworn, testified: I was in the surveyor's office from 1822 to 1836. I was sometimes merchant, boatman and surveyor.

I came here in 1817. I had been out with the surveyor before 1822. After I went into the office I did no other business. I was acquainted with Elias Rector. My business in the surveyor's office was to make out the first plats from the field-notes returned by the deputy surveyors. I have seen what was called Rector's notes of a survey of Carondelet commons; I never saw any survey; I never saw any instructions to Rector to make the survey of Carondelet commons; it was done before I came into office; the first I saw of the notes of survey was at the surveyor general's office; I made a list of the papers of Rector at the request of Gen'l Rector, who was his administrator. Elias Rector died in 1822; I examined the papers of Elias Rector at the house where he died, at the place where Peter Lindell now lives; I did not find these notes of the survey at E. Rector's; the first I saw of these notes of Rector was in a pigeonhole in the surveyor general's office, loose, where papers of this kind were kept; there was no field-book, that I remember; I never used

them; they were never recorded; I never heard the surveyor general direct me to notice these notes; the survey was not signed, except E. R.; I never saw any plat of survey of these notes, nor any instructions for making the survey. If the surveyor was making a survey under instructions he would begin, "by virtue of instructions to survey the commons of such a date, I began," &c. I see nothing here to indicate that this is an official survey; there is no oath of the chainmen, as required; all surveyors are required to have two chainmen and two axemen, and their oath was annexed. General Rector was the administrator of Elias Rector, and he requested me to act for the estate. General Rector was the surveyor general at that time; I never heard of any charge made by Elias Rector for any survey of this thing.

The old books of General Rector and Elias Rector are stolen or carried away; and so far as I recollect, I never heard of any charge made for these notes of a survey by E. Rector. I was requested to make out a list of accounts; I have no recollection of any account in the books of Elias Rector for surveying this land for Carondelet common; I never knew that this survey was presented for approval in the surveyor general's office. In the early times I made out the plats of all the surveys around St. Louis and Carondelet; there was no such survey as Rector's on any plat before 1834; the plats I made out included all the approved surveys; so far as I know, the plats had been made before 1822, of the country round St. Louis; these plats were stolen or carried away, or so defaced that you could not tell what they were; I saw one of the plats at Washington, but it was blurred over. By the contract for surveying, 3 plats were made out for the office; there is but one plat remaining, blurred over, in the surveyor general's office, with Rector's and Brown's name blurred, so you can't read it; the plats of 1822 that I made of St. *St.* Louis and Carondelet townships are gone; I saw a copy in Washington very much defaced; there are 3 different plats of the commons, all different; no two of them are alike.

Q. Can you locate the tract of land lying within the lines following, commencing at the Sugar Loaf mound, running thence to the northeast corner of the common-fields of Carondelet; thence along the front line of said common-fields to the village of Carondelet; thence along the north line of the said village to the river Mississippi, and thence up the said river to the said Sugar Loaf mound, or to a point on the bank opposite said mound, on a continuation of the line to northeast corner of the common-fields?

Ans. I can locate this tract with or without the map. This is a specific tract of land as definite as any that could be described. I don't know of any private survey made by Elias Rector. The first time I ever saw a survey of the United States for the Sugar Loaf line was in 1840, when I saw the survey of Brown of the incorporation of St. Louis.

Deposition of Dr. Nicholas H. Demenil read for plaintiff, as follows:

Depo'n of Dr. Nich's Demenil.

In the St. Louis Land Court.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS.

To the Defendant:

You are hereby notified, that depositions of witnesses, to be read in evidence in the above entitled cause, on the part of the plaintiff, will be taken at the house of Dr. Nicholas Demenil on South 3d street, in the city of St. Louis, in the county of St. Louis, and State of Missouri, on the 20th day of February, 1858, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, and that the taking of said depositions, if not completed on that day, will be continued from day to day, at the same place, and between the same hours, till completed.

BRITTON A. HILL,
Att'y for Pl'ff.

Depositions of witnesses, produced, sworn and examined on the 20th day of February, in the year of our Lord 1858, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, at the house of Dr. Nicholas Demenil, on South 3d street, in the city of St. Louis, in the county of St. Louis, and State of Missouri, before me, M. R. Mullen, a notary public in and for the county and State aforesaid, in a certain cause now pending in the land court of the county of St. Louis, State of Mo., between the city of Carondelet, plaintiff, and the city of St. Louis, defendant, on the part of the plaintiff.

Nicholas H. Demenil, of lawful age, being produced, sworn and examined on the part of the plaintiff, deposeth and says:

I came to St. Louis in 1834, and have lived here ever since. I know where the Sugar Loaf mound is, between the city of St. Louis and city of Carondelet, on the bank of the Mississippi.

Question by plaintiff's counsel. Do you know what said mound is a mark of?

Objected by S. Simmons, attorney for defendant, as leading.

Answer. I do not know except by hearsay; officially I do not know anything about it.

Question by same. Do you know where the dividing line between the city of St. Louis and Carondelet is?

Objected by same as leading, irrelevant and incompetent.

Answer. I know the inhabitants of Carondelet claim as far north as the Sugar Loaf, and the inhabitants of St. Louis claim nearly as far south as Brown's survey, but to my knowledge the inhabitants of Carondelet did claim positively to the Sugar Loaf.

Answer objected to by same, as not responsive to the question.

Question by plaintiff's counsel. Were you present at a sale of commons claimed by St. Louis, in 1836? If so, state what transpired at said sale.

Objected by same, as irrelevant and incompetent.

Answer. I was present at the sale in 1838, when the commissioners appointed by the city for the sale of the commons came upon the ground to sell the land south of the Sugar Loaf, when a man by the name of St. Amonde Micheau, protested on the ground against selling that part of the ground which he called his property, as a lessee under inhabitants of Carondelet. The commissioners of St. Louis, notwitstanding the protest, went on to sell, and sold, and I think this St. Amonde Micheau bought the land in he claimed himself at that sale, and I think he said it was to avoid difficulty. St. Amonde Micheau was very angry at the time. The place I refer to is where St. Amonde Micheau had his residence, and a shot tower was on this place, on the bank of the river, and the place was enclosed by a rail fence. I knew St. Amonde Micheau to be there in 1835. I was his attending physician. He was about eight hundred to one thousand feet, more or less, south of the Sugar Loaf.

Question by plaintiff's counsel. Did you see any other inhabitants of Carondelet on the ground, below or at the Sugar Loaf, at the time the commissioners of St. Louis were offering the commons for sale? If so, state what they said or did.

Objected to as irrelevant and incompetent by defendant's counsel.

Answer. Several inhabitants of Carondelet were attending the sale. I think some protested against the sale, but I cannot say positively; it is a vague recollection. I value the land between McPherson's and the Sugar Loaf, on each side of the Carondelet road, at the average of about three thousand dollars per acre; some choice piece might be worth more.

Question by same. For a thirty-years lease from this date, what will the land be worth per acre, per year?

Objected to as above by the deft's counsel.

Answer. I think it worth about $20 per acre, per year.

Question by same. From the first of January, 1853, what would this ground lease for upon a thirty-years lease?

Objected to by same as irrelevant and incompetent.

Answer. The land would have leased for less in 1853 than now, because the ground was less valuable then. It would lease for about ten dollars per acre per year from that time.

Cross-examined by Defendant's Counsel.

The commissioners of St. Louis were on the ground in the summer or spring of 1836; I cannot remember positively; I do not know how many commissioners there were; I do not remember; some of

them, that I don't know the names of, were acting on the part of the city. I think Robert Simpson was one of them, but am not certain. I had lately come here and did not know the people by name, but several men were acting for the city. The conversation between the commissioners and St. Amonde Micheau took place at Micheau's place, just outside of his fence, forbidding them to come in. I was close by Micheau at the time; it may be ten steps, more or less.

Question by defendant's counsel. Give the exact remarks, or the substance of what Micheau actually said to the commissioners.

Answer. To the best of my recollection, he said that he was a tenant under the inhabitants of Carondelet, and that he believed this land was belonging to Carondelet. He appeared to be angry, and spoke very loud to some of the commissioners there, and tried to persuade them to not sell, but they went on notwithstanding his remonstrances, and he bought in the property himself to save difficulty. I heard him say at the time, when the property was knocked down to him, the *crowed* laughed at him, and he said it was to save difficulty that he bought it.

Question by same. Has the city of St. Louis been selling commons ever since that time?

Answer. They have made several sales since. I am not certain, but I think some other person besides Micheau protested against the sale at the time. I cannot tell who the other person was. I attended other sales of the city commons, before or after the sale of 1836.

Question by same. Did you ever *year* any objections or protest made against these sales of commons which you attended?

Answer. Not to my recollection, except at this sale of Micheau's. I have no interest in this suit, directly nor indirectly.

N. NICHOLAS DEMENIL.

Sworn to and subscribed before me, this 20th day of February, 1858.

M. R. CULLEN,
Notary Public.

I, M. R. Cullen, a notary public for and within the county of St. Louis, State of Missouri, do certify, that in pursuance of the annexed notice, came before me N. Nicholas Demenil, at his house, on 3d street, city of St. Louis, State aforesaid, who was by me sworn to testify the whole truth touching the matter in controversy aforesaid; that he was examined and his examination reduced to writing, and subscribed by him in my presence, on the day, between the hours and at the place in that behalf first aforesaid, and his said deposition is now herewith returned.

Given under my hand and official seal, the 20th day of February, 1858.

[SEAL.]

M. R. CULLEN,
Notary Public.

T. Leitensdorfer's Test.

Thomas Leitensdorfer, being duly sworn, testified: I was born in Carondelet. Am nearly 40 years old. My father, Eugene Leitensdorfer, was one of the board of trustees of Carondelet in 1836. I remember a sale of the Carondelet commons in 1836 or '7, by St. Louis. I was not on the ground at the time of the sale. My father and Mr. Fassen started from my house to oppose the sale south the Sugar Loaf, as trustees of Carondelet.

On cross-examination, witness testified: I know that the town of Carondelet has sold nearly all of the commons south of the des Peres.

Wilson Primm's Test.

Wilson Primm, being duly sworn, testified: I was one of the committee on commons, and alderman of St. Louis, in 1836. It was a long time since the commons of St. Louis were sold, and my recollection of the circumstances is not positive. It was in the month of March or February, 1836. At the commencement of the sale I was present; at the middle of the sale I was not; and at the termination of the sale, when they got down to the southern portion, I was present. I saw some inhabitants of Carondelet on the grounds at the time of the sale below the Sugar Loaf. I remember John Eugene Leitensdorfer, Louis Fassen, and George Claute Brown; there were many others, whom I do not *not* recollect, but my attention was called to these persons, who were represented to me to be trustees of Carondelet. There were many others on the ground; St. Amand Micheau was there also. As a member of the board of aldermen of St. Louis, I was cognizant of these things from being frequently applied to by the people of Carondelet. Many of the inhabitants came to me because I spoke French, I suppose, and among others Mr. Fassen, and requested me to report to the board of aldermen of the encroachments of St. Louis below the Sugar Loaf line. When the sale took place in Mar., 1836, Michau was in a quandary. I told him he had better settle with St. Louis. When the committee came on the ground he protested against the sale, and we told him he had better buy himself, and no one would bid against him; he bid it in from the salesman, and then sold it to a man named Wilcox. He forced open Micheau's doors and threw the things out of the window, and there was a lawsuit about it. Leitensdorfer, Fassen, Brown, and Mr. Louis Guion were on the ground protesting against that sale of 1836. From the time St. Louis had come to the Sugar Loaf line, these

people were protesting against the sale of the commons of St. Louis, and on the ground that the Sugar Loaf line was theirs. The Sugar Loaf mound is an elevation on the bluff bank of the river, like a sugar loaf. It is a very prominent point on the bank of the river. After the sales of 1836, I do not recollect anything further on the ground. There were other acts of protest by the corporate authorities of Carondelet, but that was some time afterwards. I believe this survey to be the same one of the old town of Carondelet made by Eiler. I remember the place where the old Montesano house stood. I have never seen the Cave spring, the northeast corner of the survey of Eiler.

Question. Do you know where the north line of the village of Carondelet was *a* surveyed by Eiler?

I think the survey of Eiler includes the property where John J. Anderson now lives. John J. Anderson is south of Micheau's place, and it is south of the place where Mr. McPherson has fenced up; I know that St. Armand Micheau claimed under Carondelet, as having entered there by permission.

On cross-examination, witness testified:

The south line of McPherson's fence adjoins the north line of Anderson's ground. The subdivisions of the Carondelet commons made by Mackay were, one south of the des Peres, two north of the river des Peres. As to the general out-boundary lines of Brown's survey, I believe the subdivisions went out to the out-boundary line.

(*Admission by Pl'ff about Subdivision of Carondelet Common.*)

Plaintiff admits that the subdivisions by Mackay and Eiler included all within the out-boundary lines of Brown's survey of 1834 for Carondelet, and corresponded with its exterior lines, excepting the Jefferson Barracks tract, Julien Chouquette's tract, and Pierre Delau de *Friget*'s tract.

Primm's Test'y continued.

I believe that Carondelet has sold out all of their lands south of the river des Peres, and all of her commons, before 1848. They were by public sales, and all made before 1848. I remember 20 years ago where Pourcelli and Dominique Euge lived. Euge lived north of Pourcelli, and then Stein and then Paupe. The north line of the common-fields is at Jacob R. Stein's lot. The distance from Pourcelli is 5 or 6 arpens; from Dominique Euge it is 4 or 5 arpens. At the sales of the St. Louis commons the excitement was so great that I left. At the cave of McHose and English, George Morton bid 1,400 dollars per acre for the land, and they were drinking. In 1834, when I was preparing for the sales of the St. Louis common, I put them down at $2 an arpen, and was laughed at for putting them so high. They were not good for cultivation, be-

cause so broken. "A" street is double. Upper "A" street cuts into Anderson's ground, but does not touch his house. The eastern line of the common-field is between 2 and 400 feet west of the line of 4th street.

Bill of Exceptions.

Plaintiff then read in evidence the following documents and papers, to each of which defendant objected as irrelevant and incompetent; but the court admitted the same, and defendant excepted.

Proceed's of Inhabt's of Car., signed by P. D. Barada et al.

1st. Proceedings of the inhabitants of Carondelet of 2d day of July, 1836—signed Peter D. Barada and others, as follows:

On this 2d day of July, 1836, the following subscribers, inhabitants of Carondelet, met together, and after some discussion, concluded the *the* following resolution, to wit:

That whereas the inhabitants of St. Louis hade, on the day of March, 1836, sold part of the commons adjoining the commons of said inhabitants of Saint Louis, belonging to the commons of Carondelet, we authorize the board of trustees of Carondelet to meet the said inhabitants of St. Louis, and to compromise with them on the best and fairest terms in relation to said *pt.* commons.

Peter D. Barada, esq.,
Henry Chouquet,
his
Joseph ⋈ Vien,
mark.
his
John B. ⋈ Menard,
mark.
his
Paul ⋈ Robert,
mark.
William Pilche,
Joseph ⋈ Courtois,
George ⋈ Shoults,
Joseph ⋈ Guge,
St. Amdt. Micheau,
G. Bruye,
Joseph Le Blond,
Isadore Barada,
J. B. Delile,
Joseph Chatillion,
David Briggs,
Amable Chartran,
John Cromwell,
Joseph Guion,
Israel Shoults,
Paul ⋈ Wanard,
N. B. Franklin,
his
Joseph ⋈ Shoults,
mark.
his
Joseph ⋈ Vally,
mark.
his
Bertheleme ⋈ Guion,
mark.
his
Antoine ⋈ Courtoi,
mark.
his
Yesent ⋈ Pigon,
mark.
N'cs Paupe,
H. P. Werner,
G. Fassen,

his
Charle ⋈ Sangunet,
mark.
his
Peter ⋈ Delor,
mark.
P. J. Shoults,
Leon Levy,
Edm. Saulnier,
J. Hoets,
his
Louis ⋈ Roy,
mark.
his
Joseph ⋈ Lemas,
mark.
Archilles Solomon,
Fs. Hy. Le Favre,
Eugene Leitensdorfer,
Augus Gamache,
Louis Le Blond,
Pires ⋈ Chatillion,
his
Thomas ⋈ Chartrand,
mark.
Amis Wailst,
J. Maeder.

Letter of Bryan Mullanphy to Mayor of St. Louis.

2d. Letter of Bryan Mullanphy, of 16th May, 1839, to the mayor of St. Louis.

MAY 18*th*, 1839.

GENTLEMEN: I send you a copy of the document that I presented to the board of aldermen of this city. They referred *to* same to the committee on commons.

I have the honor to be, with much respect,
Your obdt. servant,
BRYAN MULLANPHY, *Att'y.*

To the hon. the BOARD OF TRUSTEES
of the Town of Carondelet.

ST. LOUIS, 16*th May*, 1839.

GENTLEMEN: The inhabitants of the town of Carondelet are about to make a permanent disposition of their commons.

The commons include the land south of a line running nearly east and west, intersecting Sugar Loaf hill. You can ascertain the fact to be as here stated by application to Pierre Chouteau, sen'r. The mayor, aldermen, and citizens of the city of St. Louis have sold as commons lands south of said line, and are receiving rent or interest from the purchasers. The inhabitants of Carondelet are bound to enforce their right, unless the same be compromised, which compromise they are now willing to make on reasonable terms, and have deemed it proper to make this advance towards an amicable settlement with you before making application to the legal tribunals of the county.

A speedy answer will much oblige them, the inhabitants of the town of Carondelet, by their attor.,

BRYAN MULLANPHY.

To the MAYOR, ALDERMEN, and CITIZENS of the city of St. Louis.

Res'n of Board of Aldermen of St. Louis on aforesaid letter.

3d. The resolution of board of aldermen of St. Louis of 17 May, 1839.

Friday, May 17, '39.

"A letter was received from the inhabitants of the town of Carondelet by Bryan Mullanphy, their att'y, asking for and proposing to settle a claim by them made to a portion of the St. Louis common without recourse to law, which was referred to committee on common."

The above is a correct extract from the proceedings of the board of aldermen of the above date, as recorded on page 64, vol. 5, of records of board of aldermen of the city of St. Louis.

JOHN B. HIGDON,
Clerk of Board of Aldermen.

Febr. 2, '56.

Field-notes of Brown's Survey of com. fields of Car., Mar., 1834.

4th. Field-notes of Brown's survey of the common-fields of Carondelet between 18th and 25th March, 1834.

Field-notes of Joseph C. Brown's survey of the exterior boundary lines of the common-field of Carondelet, as executed in the month of March, 1834. (See his certificate below.)

I now go to the N. W. corner of the common of Carondelet as established by me: thence

Chains.		
N. 14°	40	E.* (*This course corrected for falling off is N. 14° 10 E.)
8	00,	A stone the N. E. corner to Delor, and S. E. corner to Francois Roy, formerly, but now Benoist Marechal.
12	53,	A stone 4 lks. on the left.
17	24,	A stone S. E. corner of Gamache.
21	81,	Gamache's N. E. corner stone; from this stone the point or stone 10 arpens westward bears N. 57 W., nearly, say 2 minutes less; this stone N. E. corner is 3 lks. on the left; set to it.
30	55,	A stone 5 lks. on the left; set to it, Julien Chouquette's S. E. corner.
34	85,	J. Chouquette's N. E. corner 2 lks. left, a stone at this corner; set to it.
40	65,	A stone.

44 43, Is a stone, which I am told I formerly set when I surveyed the common of Carondelet, as I was then directed, and which they have considered as their N. W. corner. This stone is 8 lks. on the left.

45 02, A stone the N. E. corner of C. Shoultz, and S. E. of Lambert Lajoye; I set to this stone.

49 38, A stone 5 lks. on left; set to it.

53 76, A stone 7 lks. on the left, Julien Roy's N. E. corner; set to it.

58 13, A stone 5 lks. on the left; set to it; the Sugar Loaf brs. S. 66 E.

62 48, A stone 9 lks. on the left; set to it. This is the N. E. corner of 1½ arp's in front, formerly belonged Peter Martin De Laducier, being the N. E. corner of the common-fields; hence the Sugar Loaf mound lies S. 61° 10 E.; thence along the N. bdy. of the common-fields.

N. 56° 15 W.

14 35, Intersect the line of St. Louis common, and set a post therein 8 chs. and 17 lks. N. 8 W. from a post set as a corner of the survey of the said common, from the post set here at the point of intersection aforesaid.

A red-oak 3 in. in dia. brs. N. 24 E., 79 lks. dist.; and a red-oak 3 in. in dia. brs. N. 7½ E., 98 lks. dist.; from the post measure along

N. 8° W. the line of St. Louis common.

25 08, The S. E. corner stone of Prairie des Noyer fields; this stone is 8 lks. to the left; thence

N. 83½ W.

00 62, Set a post for a corner to frac'l sec's 4 and 5, tp. 44 N., r. 73 of the 5th p. m., from which a hickory 4½ in. in dia. brs. N. 55 E., 65 lks. dist., and a hickory 3½ in. in dia. brs. N. 11 W., 30 lks. dist.

South Between said sec's 4 and 5,

22 14, Intersect the N. bdy. line of the common-field of Carondelet, where set a post corner to frac'l sec's 4 and 5 aforesaid, from which a red-oak 5 in. in dia. brs. N. 20½ W., 57 lks. dist., and a red-oak 4 in. in dia. brs. N. 33 E., 114 lks. dist. This frac'l ½ mile over land good for cultivation, and lies well; is very bushy, with hickory and red-oak, bushes and hazel. I return to the post at the intersection of the line of the common-fields of Carondelet, with the line of the common of St. Louis.

A speedy answer will much oblige them, the inhabitants of the town of Carondelet, by their attor.,

BRYAN MULLANPHY.

To the MAYOR, ALDERMEN, and CITIZENS of the city of St. Louis.

Res'n of Board of Aldermen of St. Louis on aforesaid letter.

3d. The resolution of board of aldermen of St. Louis of 17 May, 1839.

Friday, May 17, '39.

"A letter was received from the inhabitants of the town of Carondelet by Bryan Mullanphy, their att'y, asking for and proposing to settle a claim by them made to a portion of the St. Louis common without recourse to law, which was referred to committee on common."

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JOHN B. HIGDON,
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Field-notes of Joseph C. Brown's survey of the exterior boundary lines of the common-field of Carondelet, as executed in the month of March, 1834. (See his certificate below.)

I now go to the N. W. corner of the common of Carondelet as established by me: thence

Chains.		
N. 14°	40	E.* (*This course corrected for falling off is N. 14° 10 E.)
8	00,	A stone the N. E. corner to Delor, and S. E. corner to Francois Roy, formerly, but now Benoist Marechal.
12	53,	A stone 4 lks. on the left.
17	24,	A stone S. E. corner of Gamache.
21	81,	Gamache's N. E. corner stone; from this stone the point or stone 10 arpens westward bears N. 57 W., nearly, say 2 minutes less; this stone N. E. corner is 3 lks. on the left; set to it.
30	55,	A stone 5 lks. on the left; set to it, Julien Chouquette's S. E. corner.
34	85,	J. Chouquette's N. E. corner 2 lks. left, a stone at this corner; set to it.
40	65,	A stone.

44 43, Is a stone, which I am told I formerly set when I surveyed the common of Carondelet, as I was then directed, and which they have considered as their N. W. corner. This stone is 8 lks. on the left.

45 02, A stone the N. E. corner of C. Shoultz, and S. E. of Lambert Lajoye; I set to this stone.

49 38, A stone 5 lks. on left; set to it.

53 76, A stone 7 lks. on the left, Julien Roy's N. E. corner; set to it.

58 13, A stone 5 lks. on the left; set to it; the Sugar Loaf brs. S. 66 E.

62 48, A stone 9 lks. on the left; set to it. This is the N. E. corner of 1½ arp's in front, formerly belonged Peter Martin De Laducier, being the N. E. corner of the common-fields; hence the Sugar Loaf mound lies S. 61° 10 E.; thence along the N. bdy. of the common-fields.

N. 56° 15 W.

14 35, Intersect the line of St. Louis common, and set a post therein 8 chs. and 17 lks. N. 8 W. from a post set as a corner of the survey of the said common, from the post set here at the point of intersection aforesaid.

A red-oak 3 in. in dia. brs. N. 24 E., 79 lks. dist.; and a red-oak 3 in. in dia. brs. N. 7½ E., 98 lks. dist.; from the post measure along

N. 8° W. the line of St. Louis common.

25 08, The S. E. corner stone of Prairie des Noyer fields; this stone is 8 lks. to the left; thence

N. 83½ W.

00 62, Set a post for a corner to frac'l sec's 4 and 5, tp. 44 N., r. 73 of the 5th p. m., from which a hickory 4½ in. in dia. brs. N. 55 E., 65 lks. dist., and a hickory 3½ in. in dia. brs. N. 11 W., 30 lks. dist.

South Between said sec's 4 and 5,

22 14, Intersect the N. bdy. line of the common-field of Carondelet, where set a post corner to frac'l sec's 4 and 5 aforesaid, from which a red-oak 5 in. in dia. brs. N. 20½ W., 57 lks. dist., and a red-oak 4 in. in dia. brs. N. 33 E., 114 lks. dist. This frac'l ½ mile over land good for cultivation, and lies well; is very bushy, with hickory and red-oak, bushes and hazel. I return to the post at the intersection of the line of the common-fields of Carondelet, with the line of the common of St. Louis.

Thence continue the line of the N. bdy. of said common-fields of Carondelet.

N. 56¼ W. Continuing the measure from the N. E. corner thereof,

19 37, To the corner post in said line to sec's 4 and 5, in tp. 44 N., r. 7 E., of the 5th p. m. above described.

MARCH 18*th*, 1834.

I, Hyacinth Pejo, do solemnly swear, in presence of Almighty God, that I will well and faithfully perform the duties of flagman on all lines I may assist to survey, to the best of my ability, so help me God.

his
HYACINCH ⋈ PEJO.
mark.

Sworn to and subscribed before me this 19th day of March, 1834.
JOS. C. BROWN, *D. S.*

N. 56¼ W.

30 57, Continue the N. line of the common-fields; a stone in said line.

39 00, A branch 4 l'ks wide brs. S.

58 33, A stone 20 l'ks to left; set to it.

80 00, A branch 6 l'ks wide runs S.

MARCH 19*th*, 1834.

I again go to the post in the S. bd'y line of Prairie des Noyer fields, corner to frac'l sec's 4 and 5, in tp. 44 N., range 7 east of the 5th p. m.; thence,

N. 83½ W. (Connected this course for falling off to N. 56¼ W.)

40 00, Set a temporary post at intersection of the north boundary line of the common-fields of Carondelette 67.16 chains westward of the N. E. corner thereof.

I now continue the northern boundary of Carondelet common-fields.

N. 56 W. Counting the measure from the N. E. corner thereof.

85 50, Intersected the St. Louis road near the 5th mile post on said road to Gravois.

116 27, A stone the N. W. corner of Carondelet common-fields set of old, and is 10 links on the left; from this corner stone I run,

S. 15½ W. Along the west boundary line of the common-fields of Carondelet.

4	38,	A stone.
8	76,	A stone.
17	52,	A stone 2 l'ks left.
21	47,	Intersected the south line of the Prairie des Noyer common-fields, where set a post 1.40 chains eastward of the S. W. corner of said common-fields. Set a post at said S. W. corner in place of the former post; I find the stumps of the witness trees, formerly taken to this corner, answer to the description of the trees; but those trees being down, I take others, to wit: A red-oak 6 in. in dia. brs. 69 W. 51 links dist., and a post-oak 5 in. in dia. brs. S. 67½ W. 48 l'ks dist., at said point of intersection of the west boundary line of Carondelet fields, with the south boundary line of des Noyer fields mentioned on the former page; I set a post, from which a post-oak 3½ in. in dia. brs. S. 21 E. 69 l'ks dist., and a post-oak 4 in. in dia. brs. N. 15½ E. 77 l'ks dist.; from this post I run along the south boundary,
S. 83½ E.		of des Noyer fields without measuring, and find this course leaves the temporary post to be 120 l'ks on the left, which post I move 53 l'ks northward into the true line of des Noyer fields; thence I run,
N. 82¾ W.		Counting from the aforesaid corner to fractional sections
41	05,	4 and 5, to the true point of intersection of the south boundary line of des Noyers fields with the north boundary line of Carondelet fields, where I set a post 68.36 chains westward of the N. E. corner of Carondelet fields, from which a post-oak 4 in. in dia. brs. N. 56 W. 49 l'ks dist., and a black-jack 6 in. in dia. brs. S. 75 W. 96 l'ks dist. I return now to the intersection of the west line of Carondelet fields with the south line of des Noyer fields, and continue the said W. line,
S. 15¼ W.		Counting from the N. W. corner of Carondelet fields.
21	88,	A stone.
27	73,	A stone near Cashman's N. W. corner of fence.
32	12,	A stone.
36	49,	A stone 2 l'ks right.
40	86,	A stone 6 l'ks right; set to it.
45	23,	A stone.
49	00,	A branch 3 l'ks wide brs. S. westward.

54 00, A stone 3 l'ks right; set to it.
58 26, A stone on east edge of St. Louis road 7 l'ks on the right; set to it.
67 12, A stone 5 l'ks on left.
72 58, A stone 3 l'ks left.
80 23, A stone by Jos. Shoults.
88 97, A stone 9 l'ks on the right lies flat, but is considered as at the corner of the angular turn in the west boundary of the fields; thence I run,

S. 26° 10 W.
4 40, Broken fragments of a stone, said to have set here in a road; a fence on the left indicates the place as a corner between two lots of the field lands.
17 53, A large stone 5 l'ks to the right; thence,

S. 35½ W.
8 67, A stone 13 l'ks to left; set to it.
15 93, An old stone 3 l'ks to right; set to it.
26 10, The S. W. corner of the field 2 l'ks on the right.
S. 56° 15 E. Connected the south boundary of said fields to *to* a point opposite the stone, which is 91.36 chains westward of the S. E. corner of said fields, where set a post 69 l'ks southward of said stone.

MARCH 25*th*, 1834.

I now correct the remainder of the said line from the S. E. corner of said fields; running
N. 56° 15 W., I correct to the above named post, set 96 l'ks southward of the said stone.
Marginal note.—"The whole length of this line is 118.16 chains."

Certificate.

I certify that the foregoing notes on pages 1 to 54, (pages 1 to 5 inclusive of this,) inclusive, are the original field-notes of the survey of the outlines of Carondelet common-fields of the common of Carondelet, and of the survey of Gabriel Constant, and of their connections with the lines of the public and private surveys as executed by me in the month of March, 1834, under instructions from Elias T. Langham, surveyor of the lands of the United States in the States of Illinois and Missouri, bearing date the 10th of February, 1834.

April 9th, 1838.

JOS. C. BROWN.

OFFICE OF THE SURVEYOR GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, June 26th, 1855.

[*For plat see original, page* 224.]

SURVEYOR GENERAL'S OFFICE,
St. Louis, the 10th April, 1850.

The survey No. 3,103, of the common-field of Carondelet, in Ts. 44 and 45 N., R. 7 E. of the 5th p'l meridian, is correctly delineated on the above plat, according to the field-notes of the survey thereof, on file in this office, which have been examined and approved. Said survey was executed by J. C. Brown, in the first quarter of 1834, under instructions of the surveyor general, dated the 10th of February, 1834, and was paid for in the 2d quarter of 1838, and charged in the account of the surveyor general for that quarter, voucher No. 3; the lines of the survey being 6 miles and 19.58 chains, and the connecting lines 1 mile and 22.80 chains; together, 7 miles and 42.38 chains.

(Signed) M. LEWIS CLARK,
Surveyor General.

OFFICE OF THE SURVEYOR GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, June 26th, 1855.

I hereby certify that the above plat of the common-field of Carondelet, designated as survey No. 3,103, and its connections with the adjoining and interfering surveys, also the certificate of the late surveyor general, M. Lewis Clark, attached thereto, are correctly copied from the original preserved on pages 23*a* of the book of miscellaneous plats, in this office.

JNO. LOUGHBOROUGH,
Surveyor General.

The foregoing notes, and the certificate attached thereto, are correctly transcribed from pages 167 to 181 and pages 185 of volume 29 of Missouri Private Surveys, in this office. The pages 1 to 54, referred to in the above certificate, are the numbers originally given them by the deputy, and have since been altered into 131 to 184, after their binding into said volume.

JNO. LOUGHBOROUGH,
Surveyor General.

Field-notes of Brown's Sur. of Com's of Car., March, 1834.

5th. Field-notes of Brown's survey of the commons of Carondelet, of March, 1834.

I, Isaac Woods, and I, Gabriel Constant, do solemnly swear, in the presence of Almighty God, that I will perform the duties of chain-carrier; that I will carry the chain horizontally, and will plumb the pins so as to obtain the true horizontal length of all the lines I may assist to measure, and that I will truly report the same to the best of my ability. So help me God.

ISAAC WOODS,

his
GABRIEL ⋈ CONSTANT.
mark.

Sworn to and subscribed before me, this 11th March, 1834.

JOS. C. BROWN, *D. S.*

I, John Baptiste Gamache, and I, John B. M. Chattillon, as markers, and I, Benoit Marichal, as flagman, do solemnly swear, in the presence of Almighty God, that I will perform the duties of markers and flagman as I may be directed, upon all the lines I may assist to survey, to the best of my ability. So help me God.

his
JOHN BAPTISTE ⋈ GAMACHE,
mark.

his
JOHN B. M. ⋈ CHATILLON,
mark.

his
BENOIST ⋈ MARICHAL.
mark.

Sworn to and subscribed before me, this 11th day of March, 1834.

JOS. C. BROWN, *D. S.*

On this, the 11th day of March, 1834, commenced to survey the common of Carondelette; that is to say: Begin at the S. E. corner of the common-fields lot claimed by Brigs, which is the N. E. corner of Clermon Delor, and corner where the line commences its turn to run N. 14° 40 E., the compass being adjusted to 8° east variation; thence run said corner N. 14° 40′ E., 8.75 chains, a very old stone in the line, (that is set of old,) N. E. corner of Hubert Tarbeau, and S. E. corner of Louis Tarbeau; at 2 arp's more sought, but did not find a corner; 17.48, a very old corner stone; 21.86, an old corner stone; 26.25, an old corner stone; 26.96, set a stone in the east boundary line of the common-fields, 70 links northward of a stone, the S. E. corner of a tract of 1½ arpent front, said formerly to have belonged to J. B. Gamache, and now to Tho's Chartrand; the stone here set *set* by me is 18 inches long, 4 inches thick and 12 inches broad, set 9 inches deep, edge east, the N. W. corner of the common of Carondelet, for correction of the common of Carondelet with the common of St. Louis, measure

from the N. W. corner stone of the common of Carondelet N. 14° 40′ E., along the front line of the common-fields, 3.65 chains, a stone corner appears to have been reset, being in a path; 5 ch. 72 links intersect the south boundary line of the common of St. Louis; 4 chains 34 links east of the S. W. corner of St. Louis common, according to a late survey thereof by me, from the N. W. corner of the common of Carondelet; S. 82 E., along a new line, the north boundary of common of Carondelet; 35.00 chains, middle of the road leading from St. Louis to Carondelet; 40.00, just east the precipice of stone on river Mississippi; 41.35, set post just at ordinary high war, as N. E. corner of the common of Carondelet, from which a sycamore 10 inches in diameter bears S. 12 E., 24 links, and an elm 11 inches in diameter bears N. 46 E., 38 links distant; thence for connection with the S. E. corner of the common of St. Louis, S. 56° E., 78 links; thence N. 25° 15′ E., 11 ch. 90 links, to the S. E. corner of St. Louis common. Again, begin at the N. E. corner of the common of Carondelet; thence S. 56° E., to near the water's edge, 0.78 chains; thence S. 32° 45′ W., down the river's edge, 41.50 chains; thence continue down the river, S. 35° W., 18.00 chains, short 3.58 links, is the S. edge of the street at Colburn's tavern; S. 52 W., 8.72, S. 38 W., 38.00, S. 30½ W., 20.00, S. 14 W., 11.00, to lowest house of the village, about 250 lks. on the right; S. 5° E., 13.50, S. 30¼ W. 44.00, S. 33¾ W., 13.87, S. 47 W., 9.00, mouth of river des Peres; S. 61½ W., 2.45, to a sycamore on S. of river des Peres; offset at right angles, viz: N. 28½ W., 73 links base; thence to said sycamore on the S. of river des Peres, S. 45½ W., making the angle 16° on said base of 73 links, making 2.54 chains across.

11th MARCH, 1834.

Begin again at the first point of beginning; thence S. 26° 10′ W., 17.50 ch., set a temporary post; thence go to an old stone, from which back toward said temporary post is N. 36° E., 8.66 ch. [see page 36, forward] to temporary post above set, which is links on the right; again return to said stone and continue S. 36° W., and counting the measure from the said temporary post, 25.70, to a temp'y post set.

I again return to the stone old corner last named on the last page before; thence S. 48° 15 W.; 7.32 ch., an old set stone; 10.15, fence; 17.57, a stone set formerly; at 4.45 further on this line is a stone lying on the ground, but old inhabitants say the last stone set as above mentioned is the S. E. corner of the common-field.* I commence then and run N. 56 W. 38.00 chains, a branch 10 links wide runs south; 86.86 chs., a stone in the line 27 links on the right set in to the line; thence N. 55 50 W., continued the

*See page 36 for the corner by me set 4 ch. 50 l., S. 56 E. from this stone, and page 51 for the true corner, viz: N. 56¼ W.

measure as from the beginning of this line; 113.66, a stone on Alvaris' line 92 links on the left; thence S. 35° W.* 60.00 chains, to bank of river des Peres, (Alvaris' line cor.) line of common 52 links on the right, which runs eastward for a connection to Bell point. I begin in the line of the common at a point 55 chains south'd of the S. W. corner of the common-fields of Carondelet; thence S. 44 E. 25.00, set a temporary post; thence S. 20 W. 2.05 ch., set a temporary post S. 46½ W. 6.00, west 2.77, N. 72½ W. 4.22.

12th MARCH, 1834.

I go to the west boundary of the line of the common on the south bank of river des Peres, where I find a stone, whence on a base of 50 links, the angle across to post set last evening north the river is 18°, and the distance is 1.53 chains; said post is westw'd the line as from the stone 9 links; continue the line from this stone S. 35° 30 W., counting the measure from S. W. corner of the common-fields; 120.00 chains, to Mr. Saunders' door on the west, 35 l.; 193.85, a spring branch 4 links wide bears eastw'd; 201.36†, Alvarez's S. E. corner stone is 18 links west, set into the line at stone, and continue same measure; 204.00, a branch 10 links wide bears east'd, 230.00; I here find the line is 224 links on the right; I set here a temporary post, and run back N. 36° E.; 24 chs. 50, a branch 10 links wide bears eastw'd; 28 ch. 71 lks., intersected Alvaris' line 37 links W. of this line, and set a post thereon 183 links west'd of his S. E. corner stone, from which a hickory 11 inches in diameter, marked as a *eight* tree of old, bears N. 36 E. 39 links, and a white oak 25 inches in diameter bears N. 54° W. 52 links distant; from this post along the south boundary of Alvaris' land, N. 54° 20 W.; 14.06 chains, to the corner to sections 13, 14, 23 and 24, in township 44 north, range 6 east of the 5th principal meridian; from this a bearing tree, a black jack, the same heretofore taken when this corner was first established, bear S. 43 W. 50 links, and a black jack, the same before taken, bears N. 48 E. links distant; this corner is as nearly set in Alvaris' line as I can set it, as is indicated by an old sight tree about 30 links east of the corner, which would make it about 2 links north; I set a stone here in place of the old post; from this corner I measure south between sections 23 and 24 in said township to connect south to the line of the common; 9.75 chains, a branch 10 links wide comes from west; 10.00, cross said branch again; 24.31, intersect the line of the common, and set a post,‡ from which a black jack 6 inches in

*This course corrected for offset is S. 35½ W.

†In making the survey No. 3,067 in the name of Gabriel Cerre, in Jan'y, 1838, I find the measure of Alvarez's line, as here noted, is 8.61 chains too long, and that 8.61 chains must be deducted from it.

3d April, 1838. J. C. BROWN.

‡This post is 19.81 chains southward of the corner in Alvarez's south boundary, at the intersection thereof with the line of this survey.

9th April, 1834. JOS. C. BROWN, *D. S.*

diameter bears N. 38½ W. 55½ links, and a post-oak 15 inches in diameter bears N. 7¼ E. 129 links distant; thence S. 36 W.; 0.90 chains, an old stone in the line of the common;* 8 90 chains, the temporary post set at 2.30 chains, where we offset into the line, as we thought, but find we had at 10 links west the line. I here commence the original measure from the S. W. corner of the common-fields of Carondelet; 263.90 chains, intersect the road leading to Jefferson Barracks; 288.50, set a post 60 links to the right at the intersection of the line of the common with the line between sections 23 and 26, township 44 N., range 6 east of 5th principal meridian, from which a red oak 9 inches in diameter bears N. 47¼ W. 98 links, and a red oak 14 inches in diameter bears S. 43½ W. 161 links distant; thence west between sections 23 and 26 in said township; 2.26 chains to a quarter section corner, from which a *a* post-oak 16 inches in diameter bears N. 88 W. 13 links, and a red oak, the same formerly taken, bears N. 39 W. 134 links distant; the other bearing tree formerly taken is fallen, but the stump agrees to its recorded position, and the signs on the log not yet rotten.

13th MARCH, 1834.

3.20 chains, set a temp'y in Jona Park's field; 3.35, river Gravois, 30 links wide, runs east; 361.02, set a post 54 links to right, at the intersection of the line of the common with the line between sections 26 and 27 in township 44 north, range 6 east of the 5th pl. meridian, from which a red oak 12 inches in diameter bears S. 29 E. 23 links, and a white oak 14 inches in diameter bears N. 81 E. 103 links distant; thence north between sections 26 and 27 in said township; 17.57 chains, to the quarter section corner as ascertained by the witnesses, one of which, a white oak before taken, stands, is 24 inches in diameter, and bears S. 47° W. 141 links; the other is down a white oak 28 inches in diameter bears N. 48 E. 118 links distant.

NOTE.—These distances on the western boundary of this survey were all counted from the S. W. corner of the common-fields of Carondelet, but seeing there is a break in the line, and an offset at Alvaris' corner, wherefrom a new measure commences, I deduct 201.29 chains from each distance entered on the line southward of that corner, to get the true distance from said offset corner.

9th April, 1834. J. C. BROWN, *D. S.*

I return and continue the line and former count of measure from the S. W. corner of the common-fields, from the post in the said line corner to fractional sections 26 and 27 aforesaid; 388.45 chains intersected the line between sections 27 and 34, where set a post in

*Corrected; see page 23. Course is S. 36° 20′ W.

the line of the common corner to fractional sections 27 and 34, township 44 north, range 6 east of the 5th principal meridian, from which a post-oak 25 inches in diameter bears N. 17 W. 24 links, and a red oak 13 inches in diameter bears S. 85 W. 87 links distant; thence west between said sections 27 and 34, 25.19 chains, to quarter section corner, 42 links south, both bearing trees stand and agree to the description formerly given.

I return and continue the line of common S. 36°* W., counting the measure from the S. W. corner of the common-fields of Carondelette; 416.00 chains, road leading from Gravois to Jefferson Barracks; 433.30, I find a stone lying on the surface; there is no line from it or near it; the line continues the same direction; 443.00, Mr. Brown lives near, on the right; 473.10, the S. W. corner of the common of Carondelette, as shown to me by the inhabitants of said village, and which corner is a cluster of stones 53 links on the right; set a post at the corner, from which a post-oak 20 inches in diameter bears N. 71½ E. 66 links, and a white oak 16 inches in diameter bears S. 13 E. 88 links distant; thence along an old line, the south boundary of the common, S. 53½ E. 22.00 chains; set temporary post and seek the line; find the corner to sections 33 and 34, township 44 north, and sections 3 and 4, township 43 north, range 6 east of the 5th principal meridian from this corner, where set a post, (the bearer before taken, viz:) a post-oak 12 inches in diameter bears N. 63 E. 40 links, and a red oak 15 inches in diameter bears S. 83½ W. 78 links distant; thence east between sections 3 and 34 in said townships; 38.62† chains intersected the line of the common and set a post; then corner to said (fractional) sections 3 and 34, this post 28 links east'd the temporary post set as above noted, and 21 links south'd at right angles, from which corner post a red oak 13 inches in diameter bears S. 38½ E. 64 links, and a post-oak 18 inches in diameter bears S. 55 W. 53 links distant; thence continue the line of the commons, measure from the S. W. corner thereof, S. 53‡ E.; 82.70 chains, set a post 76 links on the right at the intersection of the line between sections 2 and 3, township 43 north, range 6 east of the 5th principal meridian, from which post a red oak 14 inches in diameter bears S. 47½ W. 70 links, and a red oak 12 in. dia. bears S. 6½ E. 74 links; thence south between said sections 2 and 3, 0.20 chains, to the quarter section corner.(*)

NOTE.—This line forming the western boundary of this survey from Alvaris' line, corrected as corner on account of the several offsets thereunto, is 36° 20′ W.

There being evidently some error in the work, I deem it proper to examine where it is, and therefore I run from this post south 40.40 chains, section corner.

*Course corrected to S. 36° 20′ W. See page 23.

†The distance found to be erroneous, and is corrected. See page 27-28, where the true length is set—33 chains 62 links.

‡This course corrected to S. 52½ E. See page 28.

(*)I was told this was the corner, but had not sufficient evidence of the fact; only one tree as a witness is to be seen with any indications of a witness; and on cutting into that, I could not, on account of the decay, see the ¼ S. mark; there was a dead and partly burnt tree standing in place of the other witness, but the closing to it was bad, and so I ran it over.

I then retraced and remeasured the line of the common back to the post set therein between fractional sections 3 and 34, and find no error.

14th MARCH, 1834.

I again measure the line between sections 3 and 34, and find the distance 5 chains short of the former measure, it being 33 chains (65 l.) instead of 38 chains, (62 l.,) as by that measure.

I return to the post in the line of the common between sections 2 and 3, t. 43 N. r. 6 E., S. 53* E.; 149.90 chains, set a temporary post 70 links on the right at supposed intersection of the sectional line, as indicated by some marked trees. Before I establish this corner, I run thence west along the line between sections 2 and 11, township 43 north, range 6 east of the 5th principal meridian, 12.58 chains to the quarter section corner; witness trees to which both stand and agree to description, each in course, but each 1 link more in distance; set a post in place of corner. I return and establish the corner on the line of the common at the temporary post above set, being the true place of corner to section 2 and 11, in township 43 north, range 6 east of the 5th principal meridian, from which a red oak 14 inches in diameter bears S. 4 E. 69 links, and a hickory 10 inches in diameter bears S. 72½ W. 72 links distant from this post.

I continue the line of the common, counting measure from S. W. corner thereof, S. 52½† E., 185.00 chains, set a post 56 links on the left at intersection of the line of the commons with the line between sections 11 and 12, in township 43 north, range 6 east of the 5th principal meridian; from this corner post a red oak 18 inches in diameter bears S. 37 W., 29 links, and a red oak 20 inches in diameter bears S. 1½ E., 127 links distant; thence south, between sections 1 and two aforesaid, 20.36 chains, to quarter section corner; both witness trees formerly described are still standing, green, and agree to the former description, 53 E.,‡ 287.30 chains; here I intersect a line, run east or west, but find no corner on it; in seeking the corner I by accident find another line run east from a corner, and also west from said corner, one tree, a red oak, 12 inches in diameter, I suppose may be one of the witness trees, taken as de-

*This course corrected for off-sets from S. W. corner of this survey to this place is S. 52½ E.

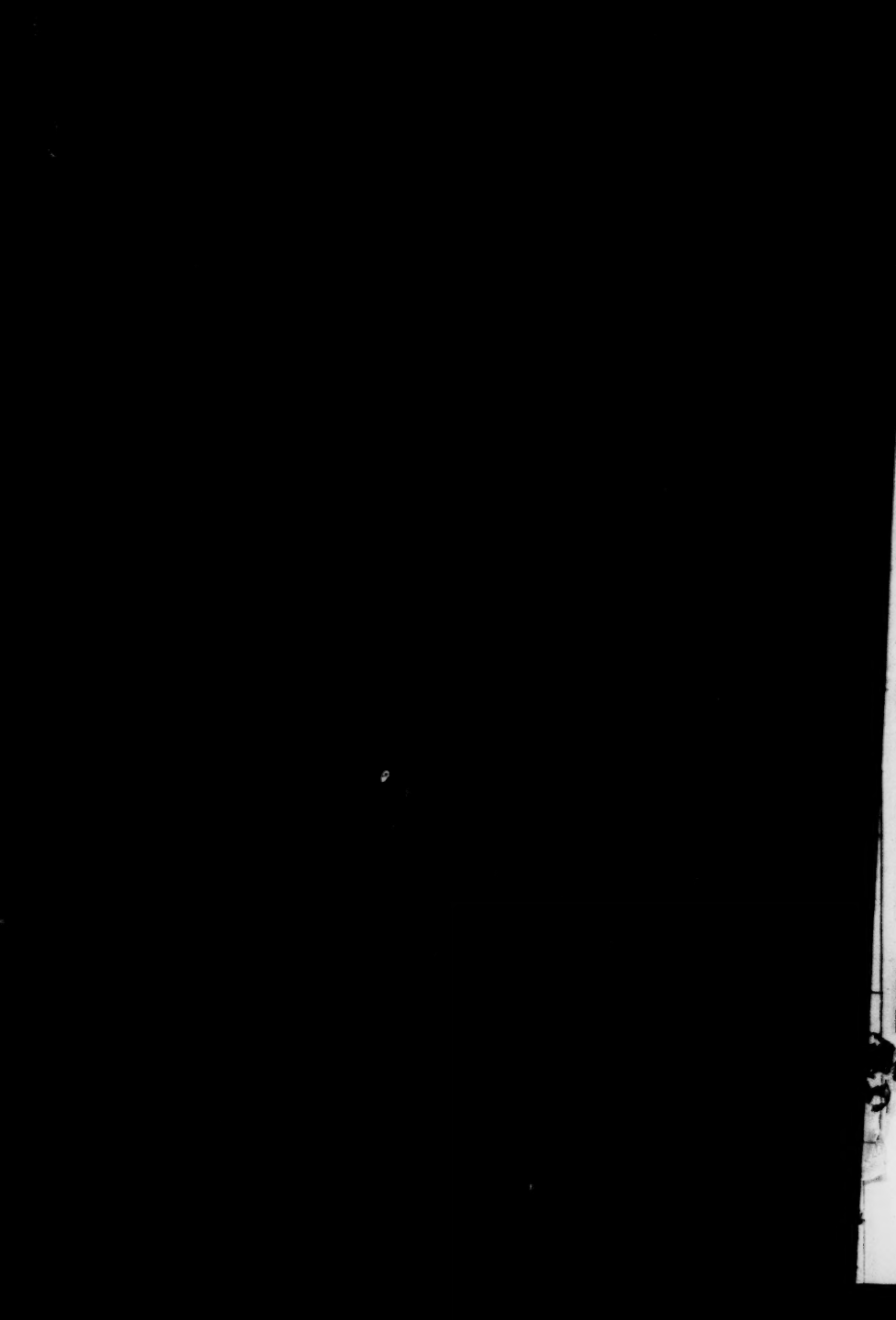
† The course of this line from the post corner described on the preceding page, to the S. E. corner of this survey on the river, is S. 53½ E., corrected from falling off.

‡ Corrected to S. 53½ E.; see page preceding.

scribed, bearing S. 21 W., 36 links distant; the other I see no trace of answering to the description furnished me, but I set the post for corner, and run east, 12.53 chains, to the brow of the prairie, and then set a temporary post south, 26 links from the S. E. corner of the common of Carondelette; I return and take another bearing tree, from corner to sections 7 and 12, in townships 43 and 43 north, ranges 6 and 7 east of the 5th principal meridian, to wit, a red oak 13 inches in diameter bears N. 57 E., 37 links distant; thence I run north, between the sections 7 and 12 aforesaid, 9.71 chains intersected the line of the common of Carondelette, 282.60 chains eastward of the beginning of the line, from the S. W. corner thereof, and there set a post, corner to said fractional sections 7 and 12, from which a post-oak 14 inches in diameter bears S. 18 W., 47 links, and a post-oak 12 inches in diameter bears S. 14½ E., 79 links distant from this post. Continue the line of the common measure counted from S. W. corner thereof, 4.70 chains, eastward from this last post to point of intersection noted on page 31, 287.30 chains from the S. W. corner of the common, which intersection is 110 links on the right 298.14 chains; the S. E. corner of the common, on the brow of the hill near the river Mississippi, 13 links, on the right, being a post-oak 14 inches in diameter, with a large stone, curiously shaped, leaning against it, or the stone is the corner.

15 MARCH, 1834.

S. 84° E. 2.43 chains.	From said corner to moderate high-water mark; then meander up the river.
N. 12 E. 31.00.	
North 15.00.	
N. 6½ E. 17.00.	
N. 17 E. 18.50.	(At 9 ch. is mouth of Martigny creek.)
N. 56 E. 3.00.	
N. 18 E. 15.00.	
N. 10½ E. 8.00.	
N. 11¾ E. 47.34.	
N. 2½ E. 9.00	
*N. 10 E. 31.00.	*Also to flag-staff at Jefferson Barracks, N. 3.00† W.
†N. 19¼ E. 52.38.	†Hence to said flag-staff at Jefferson Barracks.
N. 10 E. 34.20.	
N. 1 W. 17.50.	
N. 5¾ E. 11.00.	
N. 3½ E. 6.00.	
N. 8¾ E. 5.36.	
N. 12 E. 9.00.	



N. 24¼ E. 11.00.
N. 31 E. 10.00.
N. 44 E. 9.00.
N. 47½ E. 9.50.
N. 43¾ E. 10.88. The sycamore, x, noted on page 8, standing on the south bank of mouth of river des Peres, to which an angle was taken.

17 MARCH, 1834.

At 3 links northward of the temporary post mentioned on page 9—that is, on the course S. 21° 10′ W., at 17.47 chains, set a stone which had formerly been set, which is 27 inches long, 5 inches thick, and 8 inches wide, for corner; thence S. 36 W., 15.85 chains, cross the fence, which forms the west boundary of 4th street, or nearly so; the fence bears N. 45½ E., 25.64; set two stones for S. E. corner of the common-fields, one of which stones is 15 inches long, 3 inches thick, and 12 inches broad; the other thicker and longer, 8 inches broad; thence N. 56 W., 4.50 chains, to a stone, which had been considered the S. E. corner of the common-fields.

OFFICE OF THE SURVEYOR GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, April 9th, 1855.

I certify that the foregoing is a correct copy of all the returns on file in this office made by Jos. C. Brown, of his survey of the common of Carondelette, under contracts of the 10th March, 1834.

JOHN LOUGHBOROUGH,
Surveyor General.

6th. Register's plat of survey of 1821, May 14th.

[*For plat see original, page* 233.]

Depo. of Zeno Mackay.

7th. Deposition of Zeno Mackay, taken in perpetuation *in* 10th Sept., 1852. He is admitted to be dead. So much of it read as applies to the rebuttal, as follows:

My father, James Mackay, who was deputy surveyor under the Spanish government during his lifetime, when we were passing to and fro from St. Louis to Carondelet, would point out to me the dividing line between the commons of St. Louis and Carondelet. The line as pointed out to me by my father was a direct line from the "Sugar Loaf," commonly called the "Pain de Sucre," to the northeast corner of the common-fields of Carondelet, and from my own knowledge, this line was claimed by the old inhabitants of Ca-

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N. 44 E. 9.00.
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rondelet, as the dividing line of the commons of St. Louis and Carondelet.

After the incorporation of Carondelet as a town by the county court of St. Louis county, I was employed by the corporation authorities of the town to lay off into lots and blocks a portion of their common north of the town, and I was directed by them not to survey beyond the northern line of Brown's survey of the Carondelet common, and these directions were given to me upon the ground as expressed by them, that as there was a contest between Carondelet and St. Louis, as to the title to the land lying between Brown's north line and the Sugar Loaf line as above mentioned, they did not wish to make any disposition of any part of their common north for the present, when it was subject to dispute; that what they disposed of they wanted to give a clear title to, and one which would not be *be* the subject of the controversy. Under these directions, I proceeded to survey, lay off and plat the portion of ground lying between the incorporated town and said Brown's line. This was done by me in about the year eighteen hundred and thirty-nine.

Question. What was the extent of common claimed by the inhabitants of Carondelet north of the town?

Answer. It was all that portion of land bounded on the west by the common-fields of Carondelet, south by the old incorporated town, east by the Mississippi river, and north by the said Sugar Loaf line as before mentioned.

Question. Do you own any property, or are you interested in the Carondelet commmon north of the town or village of Carondelet?

Answer. I own no property, and I am not interested in that common.

Fred'k Mosberger's Test.

Frederick Mosberger, being duly sworn, testified: I have been a clerk in the surveyor general's office for nearly 12 years from December, 1856. I have examined for instructions for the survey of Rector of Carondelet commons, but could never find any; I have never found anything; I have examined more than once; I have examined lately; I never could find any instructions or any contract for the Rector survey of the commons; these old transactions are not recorded; I have not seen anything of that sort; the field-notes of Rector's survey look like a bare memorandum; they are not signed. There is no oath of chain-carrier, a flag-man, or anything. The surveys of the old times have no oath; it is so now. I have compared Rector's survey with Brown's survey of 1834, for the commons of Carondelet, and have platted them both. I cannot make Rector's survey close according to the field-notes. The field-notes differ very considerably, nearly 20 chains or $\frac{1}{4}$ of a mile. Brown and Rector do not correspond as to the northern line.

I protracted both surveys on one piece of paper. It is my impression that Brown's survey goes furthest north. The distance from the S. E. corner of the common-fields of Carondelet to the northwest corner of the common according to Rector is—

	chains	
	75	13
Same according to Brown.....	70	" 7
Difference.....	5	" 6

Rector's north line according to the field-notes would be $5\frac{6}{100}$ chains north of Brown's; Rector's appears not to have gone as far south as Brown by 30 chains.

On cross-examination, witness testified: There are two bends in the eastern line of the commons of Carondelet; Rector makes a call for only one bend, and Brown for two. It is not expected that the survey should be mathematically correct; one chain in a mile is allowed. Surveys do not close exactly. There was no actual survey of the out-boundary of Carondelet. It was made from the field-notes of Brown. The field-notes of Brown were followed in making the plat of the out-boundary. I did not use Rector's survey, but Brown's. The field-notes of Rector's survey do not agree with the approved plats as they are now on file in surveyor general's office. The inhabitants of Carondelet were not called upon to prove the out-boundary lines of the common-fields and village lots of Carondelet, on the ground the plat was made from Brown's survey of the commons.

On re-examination, witness testified: The plat was made in 1853, of the out-boundary line. The general was in doubt whether he ought not to make the out-boundary by actual survey. Fractional section 9 was platted before 1844, before I came into the office. It was platted by Capt. Mayfield, and he died in 1838.

Julius Pitzmann's Test.

Julius Pitzmann, a witness for plaintiff, testified: I am deputy county surveyor. I have examined Rector's and Brown's field-notes of the surveys of the Carondelet commons. I have platted them according to their courses and distances as nearly as it could be done. Mr. Rector's line is north of Brown's survey, and falls short on the south. Rector is north of Brown, on the line of common-fields of Carondelet about five chains. Brown's survey runs $35\frac{67}{100}$ chains further south than Rector's; I could not make Rector's survey close without correcting that course. The erroneous course is south 21° west, and the true course is south 31° west. I have constructed this plat with a great deal of care. I have constructed it very accurately. My profession is that of a civil engineer and surveyor. Commencing at the northwest corner, and running first south 16° west, and south 21 west from there, would

bring the line east of the common-fields. The effect of this variation from the true line would be to throw the line west of the front line of the common-fields going north or east of the common-fields going south.

According to Rector's plat, the distance from the southeast corner of the common-fields is $\frac{1}{4}$ of the distance that it is on Brown's plat, from the southeast corner of the common-fields to the river.

On cross-examination, witness testified: I made out this plat from Rector and Brown's field-notes. We went on the ground, and run the southern end of the tract, and the eastern line of Carondelet common-fields. There is a great difficulty in closing the surveys of both Brown's and Rector's. Brown's survey does not close by 12 chains, and the instructions say that only one link shall be allowed. We always go from the monuments, from stone to stone. I have been surveying for four years, and am about 21 years old.

Hamilton Micheau's Test.

Hamilton Micheau, a witness for plaintiff, testified:

I am 40 years. I am the son of St. Amand Micheau. I remember when my father lived below the Sugar Loaf, below the shot factory. I think he moved there in 1825. My father held under Carondelet as tenant. He died in March, 1845. Mr. Wilcox put him out before that. He was there after the sales in 1836 more than two years.

On cross-examination, witness testified: My father built the shot tower. He did not build any frame house below there. One Wilcox built a frame house south of the factory, and my father went to live in it. He died in it. I can't recollect whether he went there 2 years after the sales of the commons. After he left the stone house, he went down to the frame. Wilcox made a purchase of the property, as they say; but I don't know.

Bill of Exceptions.—Agreement.

The records introduced in evidence by the defendant in the cases of Dent vs. Bingham, Carondelet vs. Dent, and Gamache vs. Piquinot, are agreed between the parties to be used in the supreme court of Missouri, without being copied herein precisely, as the said cases stand in the transcripts, on file in said court; and in the event of this case going to the Supreme Court of the United States on appeal or writ of error, the said records may be incorporated into this record, by the insertion of such parts thereof here as the parties, or either of them, may desire, and the clerk of the supreme court will *he* insert them in such event accordingly.

Defendants in sur-rebuttal read the following documents in evidence, and gave the following testimony.

1st. Letter from R. McClelland, of 16th May, 1855, to John Wilson, Commissioner of General Land Office.

Letter from R. McClelland to John Wilson, Com. of Gen. Land Office, May 16th, 1855.

DEPARTMENT OF THE INTERIOR,
May 16th, 1855.

SIR: I herewith return your letter of the 6th ulto., with its enclosures, and yours of the 27th ulto., with its accompanying papers, having relation to the case of the Carondelet commons, and accompany the same with arguments and papers illustrative of the views of Mr. H. W. Williams, which have been filed here, since the case was again brought to my attention, because of the allegations of Mr. Williams, adverse to the position of the substantial identity of Brown and Rector's lines and corners.

I have carefully reviewed the whole subject, and cannot resist the conclusion heretofore arrived at, that Brown's survey is a substantial re-tracement of Rector's, and is to be taken and regarded as such.

You will be pleased, therefore, to have the surveyor general resume his operations, which were, under your direction, temporarily suspended during the pendency of this re-examination, and have him carry into effect the decision heretofore made.

Respectfully, your ob'd't servant,
R. McCLELLAND,
Secretary.

JOHN WILSON, Esq.,
Commissioner of the General Land Office.

Bill of Exceptions.

2d. Plat was by the defendant offered in evidence of the fractional section 9, township 44 N., of R. , on a large township map, but excluded by the court; to which defendant excepted.

Wm. Milburn's Test.

William Milburne, a witness for the defendant, testified:

This has been my house since the year 1816. My main business has been surveying, and clerk in the surveyor general's office. In 1816 I was out surveying—in the winter of 1816 and 1817. In 1817 I was clerk a while, and in winter of 1817 and 1818 I was out surveying. When I was clerk, in 1817, my main duty was to plat military bounty lands in the office. My main business afterwards, from 1822, was the examination of surveys and making plats. I was appointed chief clerk in 1822. I was absent in the winter of 1822 and '3, and B. Cousin was clerk during that time. I continued as such clerk from 1823 till spring of 1839. General Rector was the first surveyor general, then Wm. Clark, Wm. McRea, Elias T. Langham, Daniel Dunklin. They were all surveyors general here, and I, William Milburn, in spring of 1839 succeeded

Dunklin, and I continued until June, 1841. I saw the field-notes of Rector's survey as early as 1817. While I was in the office, Rector's field-notes were filed away with other field-notes in the office, and no action was taken upon them until Mr. Langham gave instructions to Brown to connect the field-notes of Rector's survey with the public and private surveys. My idea is that Mr. Brown was not instructed to make a survey of the commons, but only to retrace Rector's lines. The practice of the surveyors and the office was rather loose in those days, as to signing notes of surveys. I can't say that the field-notes of Rector were kept loosely. They were loosely made as to signing, &c; that is, like others which were not approved by the surveyor general, by so writing upon them. The instructions to the deputy surveyors in early times were, that they should keep their field-notes in the following manner: "Survey for A. B. so much land, &c." It was not the practice in 1817 to head the survey with reference to the instructions, until Colonel McRea's time in the year 1824 or '5.

Question. Was it customary in the time Rector for surveyors, when they returned their field-notes, to accompany them with the oath of the flagmen, &c.?

Answer. No, sir; there were hundreds of field-notes without any such statement or verification. As fast as the plats were completed they were sent on to Washington. The survey of the Carondelet commons was not completed so as to be in a situation to be sent on to Washington. This was not done until Langham had Mr. Brown connect the field-notes of Rector with the adjoining public and private surveys.

The private surveys for obtaining *for obtaining* patents were delivered to the parties when they were made, and they were sent on to Washington by the parties if they wished. It was not the practice in the office to send separate plats of private surveys; they would send plats as they were laid down on the township plat. It was the duty of this office to send on the plats to Washington as fast as the township plats were completed, and they were completed when the surveys in any given township were made. The business of platting, when I came in the office, was not greatly in arrear, because the surveyors made their own plats and the township plats. This practice of the deputy surveyor's making the township plats was afterwards abandoned. This change took place in Col. McRea's time, and the platting was done in the office, and other and greater duties required in the field in lieu thereof. The surveys about Carondelet were incomplete when I became surveyor general, and therefore could not be sent on. The township plat of St. Louis, township 45, range 7 east, in 1822, was sent on by August Langham, who had the contract for surveys south, and had not made his return when I came into the office, in 1822. Carondelet surveys are incomplete in this, that the survey of the Carondelet com-

mon was not completed, or he had not made his return under the survey. The common-fields of Carondelet were run, as to their out-boundary, at an early day.

Afterwards, when Brown surveyed the commons of Carondelet, he surveyed the out-boundary of the common-fields and the individual lots therein. It is impossible for me to recollect the precise date of these surveys. He surveyed the common-fields at about the same period of time. I don't recollect that there was any difficulty about locating the common-fields of Carondelet. You can't make a survey in the office. If the surveys are already made, you need not go upon the ground to run the out-boundary. I made the out-boundary of St. Louis. The survey was made thus: The lines had been already surveyed, except two; the part of the corporation by the court, in 1809, and the part on the north from Roy's mill, and running west 60 arpens. This whole line had to be surveyed.

Question. Do all surveys close from the field-notes?

Answer. They do not. If a man made his surveys close exactly always, I would consider him a dishonest surveyor. If a man should run one mile square in any place, he could not close mathematically. This arises from imperfection of instruments, from chaining, and other causes; the topography of the land would make some difference, not much.

Question. Was it the meaning of this phrase, "You will connect this survey with the commons of St. Louis, whether it interferes with them or not," in the instructions of Langham to Brown?

Answer. It means that, if the line of the Carondelet commons coincides with the St. Louis commons, state that; if it goes over, so; and if there be a space between them, state the fact as to the space.

According to Brown's retracing of Rector's survey, there is a space between Brown's survey of the St. Louis and Carondelet commons. This space is laid down as fractional section nine by Mr. Brown.

Plaintiff admits that McPherson is in possession of the land in fractional section 9, and was, at the commencement of this suit.

On cross-examination witness testified:

I don't know whether the survey of Rector was made before the 29th of April, 1816, or not. I don't know whether there was any contract with Elias Rector to survey the commons or not, after 1816, and do not know whether he made the survey at all.

My impression is, that Elias Rector was paid for this survey, but I don't know positively about that. You can find the voucher of that at Washington. I can't say that I have ever seen any instructions or any contract for the survey of the commons of Carondelet by Elias Rector. A deputy surveyor had no right to make a sur-

vey without authority—that is, without instructions. No surveys were ever approved that were made without authority. General Rector was very particular about that common; his nephew made some surveys without instructions, and they were rejected. The commons of Carondelet are in township 43 and 44. If the commons of Carondelet were laid down in 1821, and if there was a survey of the commons of Carondelet platted in the register's office as of 1821, and as made by Joseph C. Brown under instructions from sur. gen'l Rector, there ought not to be any other survey existing in the office at that time of the same commons. I observe that there are several subdivisions of sections in the outboundary lines of the commons of Carondelet. I observe the north boundary line of the commons of Carondelet, as laid down in 1821. The line as laid down here is more than half a mile north of Rector's platted line of the commons. The field-notes of Rector were not regarded in laying down this plat; that is evident from the plat before me. If this plat had existence in the surveyor general's office, made there, it would be conclusive proof that when this was made Rector's field-notes were not regarded. Plats are sent from surveyor general's office to the register's office. I do not know if any plats are lost from the surveyor general's office; the community is interested in knowing how the plats came to be lost, if any are lost. The plats in the register's office came from the surveyor general's office; they are certified by the surveyor general to the register. This plat of 1821 has the north line of the commons of Carondelet, at the point corresponding with or very near the Sugar Loaf, on the bank of the river Mississippi. Copies of the plats furnished the register at St. Louis were always transmitted to the Commissioner of the General Land Office at Washington. I don't recollect of the planting the stone at the Sugar Loaf. I recollect of platting the surveys of these two townships in early times; I can't say how early. I can't say whether I made these two plats as early as 1821. Upon the filing of these plats of 1821, the surveys would have been complete for the purposes designed. My impression is that the land was offered for sale immediately after these plats were filed in the register's office. There can be no doubt that the surveys of these two townships were made under proper instructions and paid for. I have never known of any appeal from the survey represented upon this plat of 1821.

On re-examination, witness testified:

I can't recollect when I first saw this platting of the commons of Carondelet. I may have seen this in the surveyor general's office. My impression is that it will be so found, that there is a plat in the surveyor general's office of this township, but whether corresponding with Brown's and Rector's survey I don't recollect. I

know that these plats of the townships were approved by Mr. Rector, surveyor general at the time, and that Joseph C. Brown wrote the notes of survey upon them.

Bill of Exceptions.

Plaintiff then read all the plats in evidence, from the register's office of the United States at St. Louis, that contain any part of the commons of Carondelet, as follows:

(For which see "copy of plat of United surveys of 1821, as made by Joseph C. Brown, as found in the register's office at St. Louis," page "262 A" of this transcript.—Clerk.)

Bill of Exceptions.

The defendant objected to the same as irrelevant and incompetent, and excepted to the admission of the same by the court to the jury.

The plaintiff thereupon offered in evidence the following instructions and reports, to which the defendant objected as irrelevant and incompetent, but the court admitted the same in evidence, and the same were read, as they are ascertained in the second volume of the book entitled "Public Lands," Laws, Instructions, Opinions, &c., Senate edition of 1838, by Gales & Seaton, printers, being numbered in said volume, and found upon the pages following: pages 25, 103, 792, 821, 869, 886, 890, 896, 915, 933, 950, 953, 955, 956, 958, 963, 967, 975, 986, 996, 999 and 1021. And the numbers of said instructions and opinions were as follows: Numbers 23, 103, 755, 799, 855, 874, 876, 884, 905, 922, 941, 949, 950, 953, 955, 963, 968, 974, 986, 994, 996 and 1011, being found upon the first named pages. And it is hereby agreed of record, that the said instructions and opinions may be read in the Supreme Court or any other appellate court, without being copied in this record from the said book last above referred to.

Plff's Instruct's given.

The case was here closed upon the evidence, and thereupon the plaintiff asked the following instructions, which were given:

1. All the right, title and interest of the United States, in and to the commons of Carondelet, was vested in the inhabitants of Carondelet, on the 13th of June, 1812, according to the extent and boundaries of the said commons, as the same existed and had been claimed and used by the said inhabitants in common, prior to and until the 20th day of December, 1803.

Given.—C. B. Lord.

22. If the jury find for the plaintiff, and shall further find that the defendant had knowledge of the plaintiff's claim five years before the commencement of this suit, then the plaintiff is entitled to

recover, as damages for rents and profits, the value of such rents and profits for five years before the commencement of this suit, and from the commencement of this suit up to this date; and the jury shall further find the value of the monthly rents and profits of the premises in question.

Given.—C. B. Lord.

24. If the jury find from the evidence, that before, at the time of, and after the survey of Brown, for the commons of Carondelet of 1834, the board of trustees of Carondelet claimed the commons of Carondelet on the north of the village to extend to the Sugar Loaf, and that the said *survey* corporate authorities of Carondelet did not accept the said survey of *of* 1834, as the true limit of the commons of Carondelet on the north, but continued from the time of said survey of 1834 to claim as their commons the premises in controversy as a part of their commons until the commencement of this suit, then the plaintiff is not estopped by said survey of 1834, from recovering the premises sued for in this action, if the said premises lie within the commons of Carondelet, as used by the inhabitants of the village before the 20th day of December, 1803.

Given March 3d, 1858.—C. B. Lord.

Plff's Instructions refused.

And the plaintiff asked the following other instructions in this case to be given to the jury:

2. If the jury find from the evidence that the land in controversy is within the commons of Carondelet, as the same were claimed, used, and possessed by the inhabitants of the said town or village prior to and until the 20th day of December, 1803, then the title of the United States thereto was vested in the said inhabitants, on the 13th day of June, 1812.

3d. If the survey No. 3,102 excludes any portion of the commons of Carondelet, as the same was claimed, used, and possessed by the inhabitants of the said town or village as common prior to and until the 20th day of December, 1803, it is not conclusive of the extent and boundaries of the land confirmed by the said inhabitants by the act of 13th of June, 1812, nor had the board of trustees of said town any authority by assenting to said survey, or accepting the same, to divest the title or bar the right of the said inhabitants to or on that portion of the commons confirmed to them, and not included by said survey on the north.

4th. The board of trustees of the town of Carondelet had no power, by sale or otherwise, to divest the inhabitants of said town of their title in any portion of the commons confirmed to them by the act of the 13th June, 1812, not included within the survey of Lawrence M. Eiler, made in November, 1832, and referred to in the act of the general assembly of Missouri, approved the 13th day of February, 1833, entitled An act authorizing the corporation of Carondelet to sell and convey certain lots of ground.

5th. The board of trustees of Carondelet, prior to the year 1839, had no lawful authority to agree to or accept any survey of the commons of the said town, which excluded land confirmed to the said inhabitants as commons by the act of Congress of 13th of June, 1812, so as to divest the said inhabitants of their title in the land so excluded, or bar their right of action therefor.

6th. The certificate of the recorder of land titles of 22d of August, 1834, purporting to be a confirmation certificate, was issued without authority of law, and is not evidence of the extent and boundaries of the commons confirmed to the inhabitants of Carondelet by the act of the 13th of June, 1812.

7th. The survey No. 3,102 by Brown is not and does not purport to be a survey of the commons of Carondelet, as confirmed by the act of Congress of 13th of June, 1812. It is made under instructions, confining the said Brown to the field-notes of Elias Rector.

8th. The jury, in determining whether the corporate authorities acquiesced in or consented to said survey of Brown of 1834, as the true survey of their commons, are instructed that they are to consider, from all the facts and circumstances in evidence before them, whether the said corporate authorities of Carondelet, by their acts, officially accepted of and consented to the survey of Brown of 1834 as the true limit of the commons of the town on the north; and if the jury find from the evidence, that the corporate authorities of carondelet, by their official acts, continued to claim the land north of Brown's survey of 1834, after the making of said survey, and up to the time when said survey was acted upon by the Commissioner of the General Land Office in 1839, then the said survey of Brown of 1834 does not estop the plaintiff from recovery the land north of the north line thereof in this action.

9th. The jury, in determining whether the corporate authorities acquiesced in or consented to said survey of Brown of 1834 of the commons of Carondelet, as the true line of their commons on the north, or as a true survey of their commons, are instructed, that they are to consider, from all the facts and circumstances in evidence before them, whether the said corporate authorities of Carondelet, by their acts, officially accepted of and consented to the survey of Brown of 1834, as the true limit of the commons of the north; and if the jury find from the evidence that the corporate authorities of Carondelet, by their official acts, continued to claim the land north of Brown's survey of 1834 up to the Sugar Loaf line, before and after the making of said survey of Brown, and up to the time of the commencement of this suit, then the jury is instructed that the said survey of Brown, and the delivery thereof to the authorities of the corporation of Carondelet, and the use thereof in suits by the said corporation, do not estop the plaintiff from

recovering the land north of the north line thereof, in this action.

10th. The certificate of Frederick R. Conway, recorder of land titles, of 22d August, 1839, purporting to a certificate of confirmation of the commons confirmed to the inhabitants of Carondelet by the act of 13th June, 1812, is not evidence of the extent and boundaries of the said common.

11th. The survey No. 3,125, purporting to be a plat and survey of the land claimed by the inhabitants of the city of St. Louis, as commons, is not conclusive as against the plaintiffs or the inhabitants of Carondelet.

12th. If the survey No. 3,102, as made and returned by Joseph C. Brown, was disapproved by the Commissioner of the General Land Office, and has been changed and modified by order of the Secretary of the Interior since the commencement of this suit, so as to exclude therefrom a large tract of land included in the said survey as originally made and returned, then the said survey is not conclusive against the plaintiffs, of the extent and boundaries of the commons confirmed to the inhabitants of Carondelet by the act of 13th June, 1812.

13th. If survey No. 3,102, as made and returned, was disapproved by the Commissioner of the General Land Office, or Secretary of the Interior, or both, it was not afterwards obligatory upon the inhabitants of Carondelet as conclusive against them of the extent and boundaries of the *boundaries of the* commons confirmed to them by the act of 13th June, 1812.

14th. The United States not being concluded by survey No. 3,102, as made and returned by Joseph C. Brown in 1834, according to its extent and boundaries, on the south side of the riviere des Peres, the inhabitants of Carondelet are not excluded by the said survey as so made and returned, according to the extent and boundaries on the north side of said riviere des Peres, nor by the said survey as charged or modified by order of the Secretary of the Interior since the commencement of this suit.

15th. The plat of the out-boundary lines of the village of Carondelet, as platted in 1853, purporting to include the out-lots, village lots, common-field lots, and commons, given in evidence, is prima facie evidence only that the commons of Carondelet, as confirmed by the act of 13th of June, 1812, were within said out-boundary lines; and if the land in controversy is not included within said out-bounday lines, then the plantiff cannot recover, unless the jury find, from the evidence, that said out-boundary lines are incorrect, and that the true and correct out-boundary lines so run as to include all the commons, village lots, out-lots, and common-field lots, would include the land in controversy.

16th. The deputing of persons by the board of trustees of Carondelet to carry the chain, and attend Brown, the surveyor, in

making the survey; the receiving the report of the survey, and of the persons deputed to attend its completion, that it was completed; the causing a copy of the plat of survey to be framed and hung up in the town hall of Carondelet; the making of the lines of the survey with stones; the procuring of a certificate of confirmation of the commons, based upon and referring to said survey, and the using of said survey in litigation in suits for land south of Carondelet village,—do not constitute an estoppel in law, so as to bar the plaintiff from recovering in this suit according to the true line of the commons granted to Carondelet by the act of 1812; and if the jury find that, at the time said acts were done, the town of Carondelet had a tenant on the commons north of Brown's survey, as claimed by them; that their north line of commons had been run by Brown before or at the time of the survey of the commons in 1834, from the Sugar Loaf to the common-field; and if said Sugar Loaf line was marked on the plats, or appeared on the field-notes of surveys in the surveyor general's office; and if the town of Carondelet, before and after Brown's survey, claimed, as their commons, north of Brown's survey to the Sugar Loaf, up to the commencement of this suit,—then the jury is authorized to find that there was no such consent or acquiescence in Brown's survey of 1834 of the commons as will bar the plaintiff from recovering such lands as was really commons of said town on the 20th Dec., 1803.

17. If the jury find from the evidence that no part of the land *on* controversy is neither the survey of the town of Carondelet, made by Lawrence M. Eiler, deputy surveyor of the county of St. Louis, made in November of the year eighteen hundred and thirty-two, by authority of the board of trustees of said town, the acts and proceedings of the said board of trustees in relation to survey No. 3,102 do not estop the plaintiffs from disputing the validity or accuracy of said survey, nor preclude them from maintaining their action for the recovery of any part of land within the commons as used, held, and possessed by the inhabitants of said village prior to 20th Dec'r, 1803, and confirmed by the act of 13th June, 1812.

18th. If it appears to the jury from the evidence that the survey No. 3,102 was never assented to by the United States prior to the 23d February, 1855, and that the approval thereof by the Secretary of the Interior excepts from the said survey a large part of the land therein embraced and surveyed as part of the commons of Carondelet in 1834, and which the inhabitants of the said village would have been entitled to, if the United States had assented to said survey without said reservation, then the said corporate authorities of Carondelet are not bound by said survey, notwithstanding any assent of the corporate authorities of the village previous

to said final approval of said survey by the said Secretary of the Interior.

19th. The jury, in determining the question whether the corporate authorities acquiesced in or consented to said survey of Brown of 1834 as the true survey of their commons, are instructed that they are to consider from all the facts and circumstances in evidence before them whether said authorities, by their acts, officially declared, accepted and consented to the said survey as the limit of the commons on the north, beyond which they had no further claim, and the burden of showing this fact of acceptance and consent by the official acts of the board of trustees of the town is upon the plaintiff.

20th. If the town of Carondelet had a tenant on the commons north of Brown's survey, as claimed by them before, at the time and after Brown's survey; and if their north line of commons had been run by Brown before or at the time of the survey of the common in 1834 from the Sugar Loaf mound to the common-fields, and if said line was marked on the plat, or appeared on the field-notes of survey in the surveyor general's office; and if the town of Carondelet, after Brown's survey, claimed as their commons north of Brown's survey to the Sugar Loaf, then the jury is instructed that such facts and circumstances are strong evidence that said survey of Brown was not accepted or acquiesced in by Carondelet.

21st. The assent to and acceptance of the survey by Brown of 1834 by the inhabitants of Carondelet, so as to operate as an estoppel, must be an assent to and an acceptance of the survey as the limit of the commons of Carondelet on the north of the town, and the burden of proving the fact of such acceptance of and consent to the survey of Brown as the northern limit of the commons by the corporate authorities of Carondelet is upon the defendant; and if the jury find that the corporate authorities of Carondelet, before and at the time of and after the survey of Brown, claimed as their commons land north of Brown's survey, and up to the Sugar Loaf, then the mere acceptance of Brown's survey, and the use thereof in suits and otherwise, as a survey of commons of Carondelet, does not operate as an estoppel, or bar them from recovering in this action.

23. If the jury find from the evidence that there was an United States survey of the commons of Carondelet, made in 1821, and platted in the surveyor general's office, and a copy thereof filed in the office of the register of the United States, and if there was never any appeal from said survey, and if the same remained of record from 1821 until the year 1834, and still remains of record, then the plaintiff is not estopped by the survey of Brown for the commons of Carondelet of 1834, from recovering the land in question, so far as the said land lies within said United States survey of 1821.

Instructions marked No. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 23, refused March 2d, 1858.—C. B. Lord.

Bill of Exceptions.

And the court refused to give each and every of said instructions from number 2 to 24 inclusive, as last above set forth to the jury, to which decision of the court the plaintiff then and there excepted and objected.

And the defendant asked the court to give the following instructions to the jury, which the court gave, as follows:

Deft's Instr'ns.

1. If the jury believe, from the evidence, that the survey made in 1834, by Joseph C. Brown, of the commons of Carondelet, was within the same year returned to the office of the surveyor general of public lands of Illinois and Missouri, and was in that year approved by such surveyor general, and that that survey is now the approved survey of said commons as recognised by the land department of the United States; and if the jury further find, that the board of trustees of said town of Carondelet were notified by said Brown before said survey was made that he had received his instructions, and would commence the work at a time named; that said board of trustees appointed a committee to superintend the survey; that afterwards said committee reported to said board of trustees, "that Joseph C. Brown had completed the survey of the commons, and that the duties assigned them *was* duly performed; that said trustees ordered the persons employed in said survey to be paid, and appointed Joseph Chattillion to set up a stone every half-mile on the line of said commons, where necessary, in order to designate the line properly; and if the jury further find, that afterwards, and within the year 1834, the board of trustees of said town of Carondelet obtained a plat of said survey of the commons, and a confirmation certificate, issued by the recorder of land titles, and based upon said survey, and ordered said survey and confirmation certificate to be filed in their office, and directed the register to have the survey framed for the use of the town; and if the jury further find, that afterwards, in the year 1839, and subsequently thereto, the board of trustees of said town of Carondelet caused the land included within said survey to be subdivided into lots or tracts, conforming in such subdivisions to the exterior lines of said survey as the boundary of the commons, and did proceed to dispose of said lands according to such subdivisions by leases for 99 years, renewable; and if the jury further find, that the corporation of said town of Carondelet, in different suits at law, in which the title to the commons of said town came in question, did exhibit and give in evidence the said survey as the regu-

lar and approved survey of the commons of the said town; and if the jury further find, that the said corporation of Carondelet, for fifteen years after the said survey was approved and recorded, made no application to the land department of the United States to have said survey set aside or changed,—then these facts are in law an acceptance of such survey by the corporation of Carondelet, and such acceptance estops the plaintiff from claiming as a part of the commons of said town any land lying outside of said survey.

10. But if the jury believe, from the evidence, the facts set forth in instructions number 1, given for def't to the jury, then no claim of commons by the corporate authorities of Carondelet outside of the survey by Brown of 1834 should be regarded by the jury, unless made and insisted upon in the land departments of the United States, and as a claim upon or against the United States, for commons outside of said survey.

Given March 3d, 1858.—C. B. Lord.

Bill of Exceptions.

To the giving of which last two instructions the plaintiff then and there objected and excepted.

Mo. for New Trial.

And the foregoing were all the proceedings and evidence on the trial of this cause. And the jury having returned a verdict for the defendant, the said plaintiff filed, by attorney, its motion for a new trial, as follows:

THE CITY OF CARONDELET, Plff., vs. THE CITY OF ST. LOUIS, Deft. } In the St. Louis Land Court, of October Term, 1857.

The plaintiff comes and moves this court for a new trial in this cause, for the following reasons:

1st. Because the verdict is against evidence and the weight of evidence.

2d. Because the verdict is against law.

3d. Because the court erred in admitting incompetent and illegal evidence to the jury for the defendant.

4th. Because the court erred in refusing to admit competent and legal evidence to the jury on the part of the plaintiff.

5th. Because the court erred in giving to the jury the instructions asked and given for the defendant.

6th. Because the court erred in refusing to give to the jury the instructions asked by the plaintiff.

HENRY S. GEYER,
Att'y for the Plaintiff.

Bill of Exceptions.

The court overruled said motion, and the plaintiff then and there

excepted, and prayed that the same and all the foregoing proceedings, evidence, documents, and rulings, be made a part of the record in this cause, which is done accordingly, as witness my hand and seal, as judge of said court, in the term of March, 1858. This bill of exceptions is signed at March term, 1858, pursuant to two stipulations filed at the last term, as follows:

1st Stipul'tn to File and Sign Bill of Exceptions.

CITY OF CARONDELET vs. CITY OF ST. LOUIS. } In the St. Louis Land Court.

It is agreed between the parties in this suit that the bill of exceptions may be signed at any time within twenty days, in this suit, and that the bill may be filed by agreement, nunc pro tunc, as of the 5th day of March, 1858, and with the same effect as if filed on that day, in fact, and that no objection will be made thereto, and that each party will waive all error in regard to the filing of said bill of exceptions.

BRITTON A. HILL,
Att'y for Pl'ff.
A. TODD,
Att'y for Def't.

St. Louis, March 2d, 1858.

2d Stipul'tn to Same.

CITY OF CARONDELET vs. CITY OF ST. LOUIS. } In the St. Louis Land Court, October Term, 1858.

The parties, by their attorneys, consent that the bill of exceptions in the above cause may be signed at the March term, 1858, with like effect as if signed at this term, and all errors are waived therein as to said signing and filing.

A. TODD,
Att'y for Def't.
BRITTON A. HILL,
Att'y for Pl'ff.

St. Louis, 5th March, 1858.

Bill of Exceptions.

Which said stipulations were made a part of the record in this cause at the last term of this court; and the argument of the motion for a new trial was continued to this term, and decided on this same day.

Witness my hand and seal.

C. B. LORD, [SEAL.]
Judge of the St. Louis Land Court.

lar and approved survey of the commons of the said town; and if the jury further find, that the said corporation of Carondelet, for fifteen years after the said survey was approved and recorded, made no application to the land department of the United States to have said survey set aside or changed,—then these facts are in law an acceptance of such survey by the corporation of Carondelet, and such acceptance estops the plaintiff from claiming as a part of the commons of said town any land lying outside of said survey.

10. But if the jury believe, from the evidence, the facts set forth in instructions number 1, given for def't to the jury, then no claim of commons by the corporate authorities of Carondelet outside of the survey by Brown of 1834 should be regarded by the jury, unless made and insisted upon in the land departments of the United States, and as a claim upon or against the United States, for commons outside of said survey.

Given March 3d, 1858.—C. B. Lord.

Bill of Exceptions.

To the giving of which last two instructions the plaintiff then and there objected and excepted.

Mo. for New Trial.

And the foregoing were all the proceedings and evidence on the trial of this cause. And the jury having returned a verdict for the defendant, the said plaintiff filed, by attorney, its motion for a new trial, as follows:

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1st. Because the verdict is against evidence and the weight of evidence.

2d. Because the verdict is against law.

3d. Because the court erred in admitting incompetent and illegal evidence to the jury for the defendant.

4th. Because the court erred in refusing to admit competent and legal evidence to the jury on the part of the plaintiff.

5th. Because the court erred in giving to the jury the instructions asked and given for the defendant.

6th. Because the court erred in refusing to give to the jury the instructions asked by the plaintiff.

HENRY S. GEYER,
Att'y for the Plaintiff.

Bill of Exceptions.

The court overruled said motion, and the plaintiff then and there

excepted, and prayed that the same and all the foregoing proceedings, evidence, documents, and rulings, be made a part of the record in this cause, which is done accordingly, as witness my hand and seal, as judge of said court, in the term of March, 1858. This bill of exceptions is signed at March term, 1858, pursuant to two stipulations filed at the last term, as follows:

1st Stipul'tn to File and Sign Bill of Exceptions.

CITY OF CARONDELET vs. CITY OF ST. LOUIS. } In the St. Louis Land Court.

It is agreed between the parties in this suit that the bill of exceptions may be signed at any time within twenty days, in this suit, and that the bill may be filed by agreement, nunc pro tunc, as of the 5th day of March, 1858, and with the same effect as if filed on that day, in fact, and that no objection will be made thereto, and that each party will waive all error in regard to the filing of said bill of exceptions.

BRITTON A. HILL,
Att'y for Pl'ff.
A. TODD,
Att'y for Def't.

St. Louis, March 2d, 1858.

2d Stipul'tn to Same.

CITY OF CARONDELET vs. CITY OF ST. LOUIS. } In the St. Louis Land Court, October Term, 1858.

The parties, by their attorneys, consent that the bill of exceptions in the above cause may be signed at the March term, 1858, with like effect as if signed at this term, and all errors are waived therein as to said signing and filing.

A. TODD,
Att'y for Def't.
BRITTON A. HILL,
Att'y for Pl'ff.

St. Louis, 5th March, 1858.

Bill of Exceptions.

Which said stipulations were made a part of the record in this cause at the last term of this court; and the argument of the motion for a new trial was continued to this term, and decided on this same day.

Witness my hand and seal.

C. B. LORD, [SEAL.]
Judge of the St. Louis Land Court.

Af'dv't for Apl.—Apl. to S. Court granted and Bond filed.

And afterwards the following further proceedings were had in this cause, to wit:

Friday, June 25th, 1858.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS. } Appeal to the Supreme Court.

Now, at this day, comes said said plaintiff, by its attorney, and files herein an affidavit for appeal, and on its motion an appeal is granted it from the decision herein rendered to the Supreme Court; and thereupon they file herein a bond, as required by the court, in the sum of three hundred dollars, with Anthony H. Menkens as principal, and Robert N. Martin and John Maguire as sureties, which is approved by the court.

Which affidavit for appeal is in the words and figures following, to wit:

Aff'dv't for Appeal.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS. } In the St. Louis Land Court, March Term, 1858.

Anthony H. Menkens, agent for the plaintiff, comes and moves the court to grant them an appeal from the judgment rendered in this case, and on his oath says that such appeal is not made for vexation or delay, but because the affiant believes that the plaintiff is aggrieved by the judgment of the court.

A. H. MENKENS,
Agent for Carondelet.

Subscribed and sworn to before me this 25th day of June, A. D. 1858.

C. A. MANTZ, *Clerk.*
By E. P. WALSH, *D. C.*

Bond.

The bond filed *filed*, as aforesaid, in this cause, is in the words and figures following, to wit:

Know all men by these presents, that we, Anthony H. Menkens, as principal, and Robert A. Martin and John Maguire as sureties, are held and firmly bound unto the city of St. Louis in the sum of three hundred dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated at St. Louis, this twenty-fifth day of June, A. D. 1858.

The condition of the above obligation is such, that whereas the city of Carondelet has appealed from the judgment rendered against

her, and in favor of the city of St. Louis, in the St. Louis land court, for the costs of the suit.

Now, if the said appellant will pay all costs and damages that may be awarded against her, occasioned by such appeal, and shall prosecute her appeal; and shall perform such judgment as shall be given by the Supreme Court, and such as the Supreme Court may direct the St. Louis land court to give, and shall, if the judgment or any part thereof, be affirmed, comply with and perform the same, so far as it may be affirmed, and pay all damages and costs which may be awarded against her by the Supreme Court, then this obligation shall be void; otherwise it shall remain in full force and effect.

A. H. MENKENS, [SEAL.]
ROBERT A. MARTIN, [SEAL.]
JNO. MAGUIRE. [SEAL.]

Approved by the court, June 25th, 1858.

C. A. MANTZ, *Clerk.*
By E. P. WALSH, *D. C.*

Stipulation Filed.

And afterwards, the following further proceedings were had in this cause, to wit:

Tuesday, June 29th, 1858.

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS.

The following stipulation filed in this cause:

Stipulation as to De Ward's Survey.

It is stipulated and agreed by and between the parties to this suit, that the map of De Ward, purporting to be of the St. Louis commons referred to in the bill of exceptions in this case, may be used in the supreme court of Missouri, and in the Supreme Court of the United States, without being copied into the bill of exceptions, and that this agreement may be made a part of the record, as of the day of filing the bill of exceptions in this cause.

A. TODD,
Att'y for Def't.
BRITTON A. HILL,
Att'y of Pl'ff.

STATE OF MISSOURI,
County of St. Louis, ss.

I, Charles A. Mantz, clerk of the St. Louis land court within and for said county, certify the foregoing transcript to be a true and correct copy of the record and proceedings had in the case of

the City of Carondelet, plaintiff, and the City of St. Louis, defendant, as fully as the same remains of record in my office.

In testimony , I hereto set my hand and affix the seal of our said Saint Louis land court, at office, in the city of St. Louis, this third day of July, A. D. 1858.

[SEAL.]

CHARLES A. MANTZ, *Clerk.*

Assignment of Errors.

Afterwards, in said supreme court, at the October term, 1858, on the 8th day of November, 1858, the appellant appeared by attorney and filed an assignment of errors herein as follows, to wit:

The appellant comes and assigns as errors in this cause the following:

That the court below erred: 1st. In admitting to the jury, on the part of defendant, incompetent and illegal evidence.

Objected to by plaintiff.

2d. In excluding from the jury competent and legal evidence of plaintiff's duty offered.

3d. That the court erred below further, in giving to the jury the instructions asked and given for the defendant by the court, and in refusing to give to the jury the instructions asked by the plaintiffs. And the court below further erred in giving judgment for the defendant, when the judgment should have been given for the plaintiff.

Therefore the plaintiff prays that the judgment may be reversed.

B. A. HILL,
For Pl'ff.

Joinder in Error.

To which a joinder in error was then and there filed as follows:

Now, the defendant comes and says, that there is no error such as above assigned, and that there are no errors in said record and judgment, and prays for its affirmance.

A. TODD,
Att'y for Def't.

Continuance.

Afterwards, this cause was continued until the next term of this court.

Argument of Cause Commenced.

Afterwards, at the March term, 1859, the following further proceedings were had herein:

Thursday, April the 14th.—Now come again the parties herein, by their attorneys, and begin their arguments in this cause, but not concluding, it is laid over until to-morrow.

Friday, April the 15th.—Now come again the parties herein, by their attorneys, and further proceed with their arguments in this cause, but not concluding, it is laid over till to-morrow.

Saturday, April the 16th.—Now, at this day, come again the parties herein, by their attorneys, and further proceed with their arguments in this cause, but not concluding, it is laid over until *to* Monday.

Argued and submitted for Decision.

Monday, April the 18th.—Now, at this day, come again the parties herein, by their attorneys, and conclude their arguments in this cause, and submit the cause to the court for decision.

Judgment of Sup. Court.

Afterwards, on the 24th day of May, during the term aforesaid, the following further proceedings were had herein, to wit:

THE CITY OF CARONDELET, Appellant,
vs.
THE CITY OF ST. LOUIS, Respondent.
} Appeal from St. Louis Land Court.

Now, at this day, come again the parties herein, by their attorneys, and the court here being now sufficiently advised of and concerning the premises, do consider and adjudge, that the judgment aforesaid, in form aforesaid, by said land court rendered, be in all things affirmed, and stand in full force and effect.

And it is further considered and adjudged by the court, that said respondent recover against said appellant its costs and charges herein expended, and have therefore execution.

Opinion of Sup. Court.

And on rendering said judgment, the court gave a written opinion in said cause, which is in words and figures as follows:

THE CITY OF CARONDELET
vs.
THE CITY OF ST. LOUIS.
} Appeal from St. Louis Land Court.

The question upon which this case turned in the land court we consider as virtually settled by the previous decisions of this court, and fully supported by distinct enunciations of the same principle, and a similar application of it by the Supreme Court of the United States.

In the case of Carondelet vs. McPherson, this court declared: "That a survey regularly made and approved is conclusive upon the government, that the land within the boundaries is the land granted, and the acceptance of the survey by the grantee is conclusive that all the land granted is within the boundaries." 20 Mo. R., 204.

In the case now under consideration, (City of Carondelet vs. City of St. Louis, 25 M. R., p. 464,) this court said:

"If the survey of 1834 was approved, it would be prima facie evidence of the true location and boundaries of the Carondelet common, and the plaintiff could not recover without showing that it was incorrect and had never been recognised or accepted. No formal act is necessary to constitute an acceptance, but it may be inferred from a variety of acts and circumstances; and though the acts of the party going to show that the survey had been accepted, must be proven as facts to the jury, it will be the province of the court to declare, as a matter of law, the legal effect of particular acts bearing on the question."

In Menard vs. Massey, 8 How., 314, it is declared, that "when the survey is made and the field-notes returned to the surveyor general's office, and the description and plat made out in form and approved by the surveyor general, it is conclusive evidence as against the United States, that the land granted by the confirmation is the same described and bounded by the survey, unless an appeal is taken by either party or an opposing claimant to the Commissioner of the General Land Office. This consideration depends on the fact that the claimant and the United States were parties to the selection of the land, for as they agreed to the survey, they are mutually bound and respectively estopped by it."

In Guitard vs. Stoddard, (16 How., 512,) Mr. Justice Campbell, in speaking of the importance of a survey and in reference to a confirmation of a common-field lot under the act of 1812, reiterates with approbation this language of Mr. Justice Catron, in Menard vs. Massey.

The position of this court in the case of the City of Carondelet vs. The City of St. Louis, (25 Mo. R.) in relation to the mode of establishing on the trial the fact of acceptance of a survey, is not understood to conflict with the views expressed in the case of Carondelet vs. McPherson. In the last named case, the facts upon which the question of acceptance depended had not been passed upon by the jury, either with or without instructions from the court which tried the case, and this court could not, as a matter of law, assume the existence of any number of facts or any one fact, which, when established by a verdict, might in their estimation constitute an acceptance. Whether there was an acceptance or not, was regarded as a fact to be established to the satisfaction of the jury, and so it was considered in the case of the City of Carondelet vs. The City of St. Louis; but it was further added in this last case, what we suppose to be entirely consistent with the views expressed in the former one, that an explanation of the facts which legally constitute a binding acceptance is properly within the province of the court; and such was the view of a question analogous

to this, in the case of Minor vs. Edwards and Price, 12 Mo. R., 137.

However this may be, we are clearly of opinion that it is for the court to say what acts will in law constitute an estoppel; and aside from any mere verbal criticism upon the instructions of the land court and the order in which they are now found upon the record, they submit to the jury, substantially and seriatim, all the facts enumerated by the court in Carondelet vs. McPherson, and almost in the language of that opinion, and declare that these facts, if they existed, constituted an acceptance of the survey.

Assuming, however, that these decisions are not binding upon us, or that they will admit of a different interpretation, and considering the question as an open one, our opinion in relation to the merits of this case is not changed. We are unable to perceive anything startling or novel, much less the slightest appearance of injustice or harshness in the application of this familiar doctrine of the common law concerning estoppel to the public surveys; on the contrary, its mere enunciation must commend itself to the sense of justice and propriety entertained by all persons, independent of legal enactments or judicial decisions.

A claimant of a specific tract of land, for the title to which he depends entirely upon the government, applies to that government for a confirmation. The application is heard and granted, and at his instance the government, through its authorized agent, points out by a survey the exact tract which has been thus confirmed or granted. The claimant accepts the land thus designated; takes possession and disposes of it. Shall he be allowed, after this, to turn round and say, his land thus granted and surveyed, accepted and disposed of, was not at the place where the government had located it, but at another and different place?

Is there any principle of justice or natural reason which would tolerate such a course? On the contrary, is it not in conformity to common sense as well as common right, that the party who has thus declared, by the most deliberate and solemn action of which the subject-matter admitted, that his confirmation was at the place where the government had located it, should not be allowed afterwards to deny it, however false may have been the original assertion? The common law doctrine of estoppel is not a technical one, nor is it an inflexible iron rule, confining itself to a given state of facts, but a principle of justice and public policy, adapting itself to varying circumstances. It is merely an admission, made in a form so deliberate and so solemn, either by record, by deed or by act, as that public policy will not permit it to be contradicted. We see no impropriety in applying it to the peculiar condition of things which has sprung up here in reference to Spanish grants and U. S. confirmations and surveys. That it is just and equitable, no one will deny; that it is in conformity to the spirit of the laws of the

U. S. upon this subject, interpreted as they have been by the highest tribunal authorized to pass upon these laws, is manifested by what has already fallen from that court, and it is only upon the most technical grounds that the doctrine is objected to.

That the estoppel must be mutual, in order to be binding, is plain. If the government is not bound, neither is the claimant. But the view entertained of Brown's survey of 1834, in the case of Sigerson v. Dent, is that the government was bound by it, and if the government was bound by it, Carondelet was equally bound by it, if she accepted the land so surveyed as her common.

If the exclusion of the 1,720 acres of land from Brown's surveys for a military reservation had been made without the consent of Carondelet, and was a valid exclusion, within the power of the government at the time it was done, we should of course concur in the views urged by the counsel for Carondelet in this case. In that event, the government of the U. S. not being bound by the survey, neither were the inhabitants of Carondelet, however much they may have insisted upon its validity, and whatever action they may have taken in reference to it. But we have in the record two ordinances of the city of Carondelet, and a deed of conveyance, giving undoubted proof of the consent of Carondelet to this reservation.

The existence of valid claims, within the limits of the survey of Brown, would of course form no objection to the estoppel either on one side or the other. The survey was not binding on third persons. Neither the government nor Carondelet could affect the title of adverse claimants, by any agreement of theirs to a survey.

It has been argued, in this case, that as the corporate authorities of Carondelet had not any power in 1834, or previous to 1851, to sell this land in fee simple, they could not, therefore, at the date of this survey, by any consent or acts of formal acceptance, part with their title to any portion of their common, outside of Brown's survey, confirmed by the act of 1812, upon user alone.

The titles which have sprung up here, based upon inchoate claims originating under another government, and especially those concerning the commons, attached by law and usage to certain ancient villages, have occasioned much legislation on the part of the federal government, and on the part of the State, and many decisions upon those laws by the courts of both, which in truth constitute mainly the law by which these titles are to be construed and governed. The common law and the law of Spain, and the civil law, which was its basis, may guide or illustrate, but cannot control. After all, we must follow that interpretation of the statutes relating to this subject which a long series of authoritative judicial decisions may require. The whole system is sui generis, and the security and stability of titles requires that it should

be so maintained, and general principles, abstractly correct, ought not, and cannot safely be taken either from the Spanish or common law to affect the stability of titles deriving their efficacy from the laws of the U. States and of this State, and judicial interpretation of those laws, and which have been passed from hand to hand upon the faith of these decisions and laws.

We do not mean by these remarks to admit that the conclusion arrived at in this case is inconsistent with any principle of either the common law or the law of Spain, under which this property in commons originated. All we mean to say is, that the titles growing out of this peculiar property, now based upon laws of the U. States, and of this State, and upon judicial interpretations of those laws, must be governed mainly by reference to these laws and decisions.

The question on the trial of this case was not whether, in 1834, the date of Brown's survey, Carondelet had any power to dispose of her commons in fee simple, but whether either then, or at any time anterior to the trial, her acts in relation to this property amounted to an acceptance of the survey, and an appropriation of the land within its limits as her common, conceding that the corporate authorities of Carondelet possessed no power of making a fee simple title to these lands in 1834, and that her leases in 1838, for 99 years, renewable at the pleasure of the lessee, are distinguishable from any absolute disposition of the common, although the difference for all practical purposes may be quite unappreciable; yet, in 1851, her charter gave her an absolute control over this property, and a power to convert these leases into fee simple titles. In 1824 the power to lease was given, and in 1839 the leases previously made were sanctioned by an express enactment of the legislature of Missouri. (Sess. Acts, p. 148.) Whether Carondelet possessed the power, therefore, in 1834, to part with any of her title to her common or not, she certainly had that power long before this suit was brought, and had by her application to the legislature in 1838, and her application to Congress in 1848, expressly sanctioned her previous disposition of these lands in 1838 [1848.] (See petition to Congress, p. 81, P. R.) So that at the time of the trial, when her power could not be questioned, she occupied the same position in relation to her assent and satisfaction of Brown's survey, as she had done previously, when her power to give such an assent might have been questioned.

The history of this controversy, as exhibited in this record, shows that the authorities of Carondelet always acquiesced in the survey of their commons, so long as the government of the United States showed a disposition to respect it. Previous to the survey, it is true, some of the authorities of Carondelet, and probably some of the inhabitants who had no authority, remonstrated most earnestly, and perhaps justly, against Brown's survey of the St. Louis com-

mon, which, as they alleged, encroached upon their common on the north. But when Brown's survey of their common was made, embracing as it did several thousand acres more than their original claim in quantity called for, no further complaint was made, at least to the government, and it was not until the officers of the government commenced efforts to overturn this survey that Carondelet sent up her remonstrances to Washington. The controversy was then kept up; but as the government finally acquiesced in the survey, and the original approval of the surveyor general was allowed to stand, the same rule should apply to Carondelet, and both parties be held equally bound.

It is hardly necessary to add, what has already been distinctly declared by this court, in the case of Carondelet vs. McPherson, that a survey of a confirmation is a survey of the whole confirmation, and that it must be received by the claimant as it is offered by the government, as an entirety. The survey purports to embrace all the land within the claim, and if accepted at all, it must be taken in the sense in which it is granted. Carondelet cannot accept a survey of 9,000 acres as a satisfaction of her claim, under the act of 1812, for common, and at the same time be allowed to assert that there remains land outside of the survey within the confirmation. Such is not the purport or intendment of the law; and as the government never makes, and is indeed not authorized to make any such partial surveys, so the party that takes them must receive them in the sense in which they are given. Upon any other construction, a survey could not be held binding on the government.

Judge Richardson concurs.

Judgment affirmed.

W. B. NAPTON.

Bond on Writ of Error to U. S. Sup. Court.

And afterwards, and during said term, and on the 2d day of June, in the year 1859, the plaintiff filed in this cause a bond, which is in words and figures as follows:

Know all men by these presents, that we, Anthony H. Menkens, as principal, and Didrick B. Menkens and Campbell G. Link, as securities, are held and firmly bound unto the city of St. Louis, in the full and just sum of three thousand dollars, to be paid to the said city of St. Louis, her heirs, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this second day of June, in the year of our Lord one thousand eight hundred and fifty-nine. Whereas lately, at the March term, 1859, of the supreme court of the State of Missouri, in a suit depending in said court, between the city of Carondelet and the city of St. Louis, judgment was rendered

against the said city of Carondelet, and the said city of Carondelet having obtained a writ of error to the said court to reverse the judgment in the aforesaid writ, and a citation directed to the mayor of the said city of Saint Louis, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next:

Now the condition of the above obligation is such, that if the said city of Carondelet shall prosecute said writ to effect, and answer to the defendant in error all damages and costs if she fail to make good her plea, then the above obligation to be void, else to remain in full force and virtue; "to the defendant in error," interlined before execution.

A. H. MENKENS, [SEAL.]
D. B. MENKENS, [SEAL.]
C. G. LINK. [SEAL.]

Approved by William Scott, presiding judge of the supreme court, within and for the State of Missouri, this 2d day of June, 1859.

WILLIAM SCOTT.

THE STATE OF MISSOURI, *ss.*

I, William S. Glanville, clerk of the supreme court of the State of Missouri, held at St. Louis, certify the foregoing to be a full, true and complete transcript of the record and proceedings of said supreme court, in the cause of the city of Carondelet, plaintiff, against the city of St. Louis, defendant, as fully as the same remain of record and on file in my office.

In testimony whereof, I hereto set my hand and the seal of said court, at office, in the city of St. Louis, this first day of [SEAL.] October, in the year one thousand eight hundred and fifty-nine.

WM. S. GLANVILLE,
Clerk.

[*For Township plat see original, page* 258.]

The United States of America to the Mayor of the city of Saint Louis, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Missouri, wherein the city of Carondelet is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of

error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William Scott, presiding justice of the supreme court of the State of Missouri, this second day of June, in the year of our Lord one thousand eight hundred and fifty-nine.

WILLIAM SCOTT.

I hereby certify that I served the within citation on Oliver D. Filley, mayor of the city of St. Louis, at St. Louis, Mo., on the 2d day of June, 1859, by delivering a true copy of the same to him personally.

THOMAS S. BRYANT,
U. S. Marshal Eastern District of Missouri.
By J. H. DOUGLASS, *Dep'ty.*

Marshal's fee, serving citation, $2 00.

Writ of Error.

[L. S.] UNITED STATES OF AMERICA, *ss.*

The President of the United States to the honorable the Judges of the Supreme Court of the State of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, at March term, A. D. 1859, between the city of Carondelet, plaintiff, and the city of Saint Louis, defendant, a manifest error hath happened, to the great damage of the said city of Carondelet, as by her complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should to be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, this second day of June, in the year of our Lord one thousand eight hundred and fifty-nine.

Issued at office, in the city of St. Louis, with the seal of the circuit court of the United States for the district of Missouri, dated as aforesaid.

BEN. F. HICKMAN,
Clerk C. C. U. S. Missouri District.

Allowed by William Scott, presiding judge of the supreme court within and for the State of Missouri, this 2d day of June, 1859.

WILLIAM SCOTT.

STATE OF MISSOURI,
County of St. Louis, ss.

Britton A. Hill, attorney for the plaintiff in error in the within named cause, being duly sworn, says, that on the second day of June, 1859, he lodged in the office of the clerk of the supreme court of the State of Missouri, at St. Louis, a copy of the within writ of error, endorsed "the City of Carondelet vs. the City of St. Louis"—copy of a writ of error lodged in pursuance of the statute of the United States, in such case made and provided, for the above named city of St. Louis, June 2d, 1859—Britton A. Hill, att'y for the pl'ff in error. And further deponent saith not.

BRITTON A. HILL.

Sworn to and subscribed before me this 3d day of June, 1859.

WM. S. GLANVILLE,
Cl'k Supreme Court St. Louis.

THE STATE OF MISSOURI, *ss.*

I, William S. Glanville, clerk of the supreme court within and for the State of Missouri, held at St. Louis, in obedience to the within writ, herewith send to the Supreme Court of the United States a full, true and complete transcript of the record and proceedings in the case of the City of Carondelet, plaintiff, and the City of St. Louis, defendant, as fully as the same remain of record and on file in my office.

In testimony whereof, I hereto set my hand and the seal of said court, at office, in St. Louis, this first day of October, in the year one thousand eight hundred and fifty-nine. [SEAL.]

WM. S. GLANVILLE, *Clerk.*

Filed 29th November, 1859.